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101ST CONGRESS
1st Session

SENATE

REPORT
101-156

REPORT

OF THE

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

OCTOBER 2 (legislative day, SEPTEMBER 18), 1989.—Ordered to be Printed

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IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

(101st Congress)

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ACKNOWLEDGMENTS

The Committee gratefully acknowledges the high standard of professionalism and long hours of dedicated service of its counsel, Elaine W. Stone, Mark A. Klugheit, and Bruce O. McBarnette, and its administrator, Anthony L. Harvey. The Committee also wishes to commend the work of the members of its administrative staff, P. Casey McGannon, Isabel T. McVeigh, Angela Muenzer, Marilyn Poku, and Andrea Wintroub and express its appreciation to the following for their contribution to the work of the committee:

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The Committee is grateful for the special assistance of James Farrell, John Nakahata, and Lori Bass in the preparation of this report.

CONTENTS

Page

Purpose 1

PART ONE

Certification to the Senate of the Committee's proceedings 3

PART TWO

Summary of evidence 8
I. Introduction 8
II. The Bribery Conspiracy and False Statement Charges: Articles I–XV 12
A. Synopsis of the parties' positions 12
1. Principal elements of the House bribery conspiracy case 12
2. Principal elements of Judge Hastings' defense to the bribery conspiracy case 16
3. The House response to Judge Hastings' defense, and its position on the false statement articles 21
4. Judge Hastings' response 22
B. Before 1981: Background Information 23
1. Judge Hastings 23
2. William Borders and his relationship with Judge Hastings 25
3. Hemphill Pride and his relationship with Judge Hastings and William Borders 26
4. William Dredge 28
5. The Romano case 30
C. The events between the February 20, 1981 forfeiture hearing and the beginning of the undercover operation on September 10, 1981 31
1. Overview 31
2. Statement of evidence 34

Page

Summary of evidence—Continued
C. The events between the February 20, 1981 forfeiture hearing and the beginning of the undercover operation on September 10, 1981—Continued
2. Statement of evidence—Continued
a. Events through the issuance of the first forfeiture order on May 4, 1981 34
b. Events from the May 4, 1981 forfeiture order through the postponement of the May 11, 1981 sentencing 41
c. Events from the May 11, 1981 postponement to the July 8, 1981 sentencing 44
d. Events from the July 8, 1981 sentencing until the formation of the undercover operation ... 47
3. The House perspective 52
4. Judge Hastings' perspective 54
D. The Events of September 10–19, 1981: The Undercover Operation is Launched 57
1. Overview 57
2. Statement of evidence 59
a. The events of September 10–14, 1981 59
b. September 16, 1981: The Fountainebleau Dinner 67
c. September 19, 1981: The $25,000 down payment to Borders 69
3. The House perspective 70
4. Judge Hastings' perspective 74
E. Events Between the Borders-Rico Meeting of September 19 and October 9, 1981, the Day of Borders' Arrest 77
1. Overview 77
2. Statement of evidence 80
3. The House perspective 87
4. Judge Hastings' perspective 90
5. The letters to assist Hemphill Pride 93
a. Statement of evidence 93
b. The House perspective 104
c. Judge Hastings' perspective 106
F. The Events of October 9, 1981 107
1. Overview 107
2. Statement of evidence 109

Page

Summary of evidence—Continued
F. The Events of October 9, 1981—Continued
2. Statement of evidence—Continued
a. The day's events before Judge Hastings learned of Borders' arrest 109
b. Borders' arrest and other FBI activities that afternoon 111
c. Judge Hastings learns of Borders' arrest and leaves for Florida 115
3. The House perspective 119
4. Judge Hastings' perspective 121
G. The False Statement Articles: Articles II–XV 123
1. Overview 123
2. Discussion of the false statement articles 124
III. The Wiretap Disclosure Charge: Article XVI 127
A. The Nature of the Charge 127
B. Synopsis of the Parties' Positions 129
1. The House case 129
2. Judge Hastings' defense 130
C. Statement of Evidence 131
1. Judge Hastings' authorization and supervision of an FBI wiretap for investigations of public corruption in Miami 131
2. The alleged September 6, 1985 disclosure 136
3. The FBI investigation 138
4. Evidence offered to show alternative sources of the disclosure 143
D. The House perspective 145
E. Judge Hastings' perspective 147
Committee Rollcall Vote 148
Addenda:
A. Articles of Impeachment Against Judge Alcee L. Hastings 151
B. S. Res. 38, as amended by S. Res. 123, 101st Cong., 1st Sess. (1989) 161
C. Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials 163
D. Description of Committee Proceedings 165
E. Glossary of Names Which Appear in the Committee's Report 173

101ST CONGRESS
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REPORT
101-156

ON THE IMPEACHMENT OF ALCEE L. HASTINGS

OCTOBER 2 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. BINGAMAN, from the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, submitted the following

REPORT

PURPOSE

Pursuant to Senate Resolution 38, which the Senate adopted on March 16, 1989, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, this Committee has received evidence and taken testimony on the articles of impeachment against United States District Judge Alcee L. Hastings. Those articles, which were exhibited by the House of Representatives to the Senate on August 9, 1988,[1] charge:

[1] By Senate Resolution 480 of the 100th Congress, the Senate continued to the 101st Congress the proceedings in Judge Hastings' impeachment. 134 Cong. Rec. S13749-50 (daily ed. Sept. 30, 1988). The resolution was adopted on the recommendation of the Committee on Rules and Administration which, after receiving written submissions from the parties and considering English and American precedents, determined "that the Senate has clear authority to continue in the next Congress proceedings on the impeachment." S. Rep. No. 542, 100th Cong., 2d Sess. 2 (1988). The Rules Committee concluded that "[b]ecause the instant case was presented to the Senate at such a late date [in the 100th Congress], it is convenient to the Senate and fair to the parties for the case to be continued before any testimony has been taken." *Id.* at 35.

that in 1981 Judge Hastings engaged in a corrupt conspiracy with attorney William A. Borders, Jr., to obtain $150,000 from two brothers, Tom and Frank Romano, in return for eliminating jail sentences that Judge Hastings had imposed after the Romanos were convicted of racketeering offenses (Article I); [2]

that in securing his acquittal by a jury on the bribery conspiracy charge in 1983, Judge Hastings lied repeatedly under oath and submitted false evidence (Articles II to XV);

that in 1985 Judge Hastings compromised several federal undercover investigations by revealing to Dade County Mayor Stephen Clark confidential information that Judge Hastings had learned while supervising a court-approved wiretap (Article XVI); and

that, by virtue of all of the foregoing, Judge Hastings had "undermine[d] confidence in the integrity and impartiality of the judiciary and betray[ed] the trust of the people of the United States. . . ." (Article XVII).

The full text of the articles, Judge Hastings' answer, and the replication of the House of Representatives are reprinted in Senate Document 101–3, 101st Cong., 1st Sess. (1989).[3]

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[2] Judge Hastings and William Borders were indicted together in 1981 for the conspiracy that is alleged in Article I, but were tried separately. In a 1982 trial in the Northern District of Georgia, Borders was found guilty and sentenced to a term of imprisonment of five years. His conviction was affirmed. *United States* v. *Borders,* 693 F.2d 1318 (11th Cir. 1982), *cert. denied,* 461 U.S. 905 (1983). Borders was incarcerated for approximately thirty-three months (including time in a halfway house) and was on parole for approximately twenty-seven months. He has been disbarred. Judge Hastings was acquitted in a 1983 trial in the Southern District of Florida.

[3] For the convenience of Senators, the articles of impeachment are also reprinted as addendum A to this report. The text of Senate Resolution 38, as amended, and Impeachment Rule XI, are reprint-

Continued

The Committee has been given two responsibilities in reporting the evidence that it has received. First, the Committee is directed by Impeachment Rule XI to "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee. . . ." The Committee will fulfill that responsibility in part one of this report. Second, under Senate Resolution 38, "the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." The Committee will undertake that responsibility in part two of this report. The Committee has no authority to recommend whether the Senate should vote to convict or to acquit on the articles of impeachment.

PART ONE—CERTIFICATION TO THE SENATE OF THE COMMITTEE'S PROCEEDINGS

The Committee's proceedings are printed in *Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings: Hearings Before the Senate Impeachment Trial Committee,* S. Hrg. 101–194, 101st Cong., 1st Sess. (1989), which is comprised of three parts. As required by Rule XI, the Committee hereby certifies the hearing report to be a copy of the transcript of the proceedings and testimony had and given before it.

Part 1 of the hearing report contains the record of the Committee's pretrial proceedings from the appointment of the Committee on March 16, 1989, to the beginning of its evidentiary hearings on July 10, 1989. The Committee heard eighteen days of testimony between July 10, 1989, and August 3, 1989. Parts 2A and 2B of the hear-

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ed as addenda B and C. Addendum D contains a description of the Committee's pretrial proceedings, from its March 16, 1989 appointment until the beginning of its evidentiary hearings on July 10, 1989. Addendum E provides a brief description of the individuals whose names appear in this report.

ing report contain the opening and closing statements for the House and Judge Hastings, and the testimony of the House's 26 witnesses and Judge Hastings' 29 witnesses. The testimony of witnesses is also available to Senators on videotape. All witnesses were subject to examination and cross-examination by the Managers or by their counsel, and by Judge Hastings' counsel or by Judge Hastings himself. Members of the Committee also examined witnesses. Parts 2A and 2B of the hearing report also contain the testimony of 26 other witnesses, taken in prior proceedings, such as Judge Hastings' criminal trial, and 158 stipulations of fact. Part 2C contains miscellaneous material related to the evidentiary hearings. Parts 3A and 3B of the hearing report reproduce exhibits that were admitted into the record during the evidentiary hearings.[4]

Upon the Senate's receipt of this report, Rule XI provides that "the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate. . . ." The rule makes clear, however, that "nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate." The full Senate remains the master of the record before it; it may reassess the admissibility of the evidence received

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[4] All citations to the Committee's hearing record will identify the exhibit, stipulated fact, or name of the witness whose testimony is relied upon, and the volume, part and page of the hearing record where the source may be found. For example, the citation to the first page of Judge Hastings' testimony, which is found at page 2209 of part B of Volume 2, will be as follows: Hastings, 2B at 2209. House exhibits will be referred to as "House Ex." The exhibits of Judge Hastings, who is the respondent in this proceeding, will be referred to as "Resp. Ex." Stipulations will be referred to as "Stip. No.".

by the Committee and summon witnesses to testify in the well of the Senate.

Before deliberating on the articles of impeachment in closed session, the Senate will receive the argument of the parties in two forms. The House and Judge Hastings will submit written briefs which will be distributed to Senators in advance of floor consideration of the articles of impeachment. Each side will also have the opportunity to present a summation to the Senate.

In addition to other issues which the parties may wish to present to the Senate in their briefs, the Committee has asked the parties to address two matters. The first question, present in any impeachment, is whether individual Senators, in the absence of an established standard for the Senate as a whole, should be guided by a particular standard of proof in weighing the evidence. In 1986, Judge Harry E. Claiborne moved that the Senate designate "beyond a reasonable doubt" as the standard of proof for the impeachment trial. The House responded that, as an impeachment trial is not a criminal proceeding, it should be sufficient to establish guilt by "a preponderance of the evidence." 132 Cong. Rec. S15490 (daily ed. Oct. 7, 1986). The Presiding Officer ruled "that the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment." *Id.* at S15506. Upon request of a Senator, Judge Claiborne's motion was submitted to the Senate, which defeated it by a vote of 75–17, *id.* at S15507, thereby refusing to establish an obligatory standard.

The second question which the Committee has asked the parties to address is what weight, if any, individual Senators should give to the fact that Judge Hastings was acquitted of conspiring with William Borders to solicit a bribe from the Romano brothers. By a vote of 92–1, the Senate denied Judge Hastings' motion to dismiss the first fifteen articles against him, thereby rejecting his claim that his acquittal in the criminal conspiracy

trial barred his trial on impeachment for similar accusations. Further, the United States District Court for the District of Columbia, dismissing a lawsuit by Judge Hastings to enjoin the Senate from trying the first fifteen articles, held that Judge Hastings' attempt to apply double jeopardy principles to this impeachment was "premised on a fundamental misapprehension," because "impeachment is not a criminal proceeding." [5] Nevertheless, just as the question of the standard of proof is for each Senator to decide, any Senator remains free to vote to acquit Judge Hastings for any reason, including agreement with his position either that double jeopardy is a legal bar to this impeachment or that the jury's verdict should be given great deference.

Although the Committee has completed the taking of testimony and the receipt of evidence offered by the parties, and hereby transmits its record of those proceedings to the Senate, it has held its record open to receive the testimony of William A. Borders, Jr. Borders is the former Washington, D.C. attorney who was convicted in a separate trial in 1982 of conspiring with Judge Hastings to solicit a bribe from the Romano brothers. Even though he was granted testimonial immunity, Borders refused to answer the Committee's questions on July 24 and 27, 1989. (Borders, 2A at 1156–68, 2B at 1777–83).[6] On August 3, 1989, the Senate

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[5] *Hastings* v. *United States Senate,* 716 F. Supp. 38, 41 (D.D.C. 1989), *appeal pending,* No. 89–5188 (D.C. Cir.). The district court also rejected Judge Hastings' challenges to the use by the Senate of an impeachment trial committee and the Committee's unfavorable action on his application that the Senate pay the costs of his defense. Judge Hastings' appeal is scheduled to be argued in the District of Columbia Circuit on October 17, 1989.

[6] In addition to the objections presented by his counsel, Borders made personal statements to the Committee on July 24 and 27. (Borders, 2A at 1158, 2B at 1777–79). Borders objected that he had already been imprisoned for his 1982 bribery conspiracy conviction and for civil contempt for refusing to testify before a grand jury in 1982. Noting that neither the House nor Judge Hastings had called

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agreed to Senate Resolution 162 which authorizes the Committee to commence a civil enforcement action against Borders to compel him to testify. The resolution authorizes the Committee to continue, until the final disposition of the articles of impeachment against Judge Hastings, its action to enforce its subpoena to Borders.[7]

On August 17, 1989, the United States District Court for the District of Columbia granted the Committee's application to enforce its subpoena and ordered Borders to appear before the Committee and to testify fully about events relevant to the articles of impeachment. Borders appeared before the Committee on August 22, 1989, and again refused to testify. (Borders, 2B at 2536). Later that day, the District Court adjudged Borders to be in civil contempt, and ordered him to be committed to the custody of the United States Marshal until he was prepared to testify or until the Senate takes final action on the articles of impeachment. (2C at 3275). As of the filing of this report, Borders remains incarcerated.

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him as a witness, Borders also objected that: "The committee has decided to call me even though they're allegedly not serving as a prosecutor but, rather, as the chief adjudicatory body. I had always thought that prosecution and judgment are two quite separate functions in the administration of justice. Consequently, the two should not merge.* * * However, this committee has apparently sought to ignore such a natural course of events in favor and embrace of a marriage between prosectuion and judgment." *Id.* at 1778.

[7] 135 Cong. Rec. S10012-13 (daily ed. Aug. 3, 1989). In its report to the Senate recommending civil enforcement of its subpoena, the Committee responded to Borders' objection to the Committee's decision to call him as a witness: "The decision to call Mr. Borders was not intended to favor either the House or Judge Hastings. The Committee has no preconception about whether Mr. Borders' testimony would favor one side or the other. Rather, it has concluded that the effort to find the truth, whoever may be favored by it, would be aided by hearing from the one person other than the respondent who has personal knowledge of it." S. Rep. No. 98, 101st Cong., 1st Sess. 10 (1989).

In the hope that, even at this late date, Borders will comply with his obligation to testify, the Committee has concluded that it should keep the evidentiary record open until the Senate decides that it is prepared to take final action on the articles of impeachment. Borders is the only person other than Judge Hastings who has complete personal knowledge of the truth or falsity of the accusations against Judge Hastings, and the Committee believes that it should not abandon its efforts to secure his testimony.

PART TWO—SUMMARY OF THE EVIDENCE

I. INTRODUCTION

The Senate first utilized an impeachment trial committee to receive and report evidence during the 1986 trial of the articles against Judge Harry E. Claiborne. On the basis of the Senate's experience in that impeachment, the Committee on Rules and Administration concluded that "it would be helpful to Members in their review of the record to have available a neutral summary, and that such summary should be prepared by the impeachment committee." S. Rep. No. 1, 101st Cong., 1st Sess. 74 (1989). Accordingly, Senate Resolution 38 authorizes the Committee "to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." This portion of the report fulfills that responsibility.

The Committee's Summary of Evidence is divided into two major sections. Section II presents the evidence on the bribery conspiracy and false statement allegations that are set forth in Impeachment Articles I–XV. Section II is divided into seven subsections. After subsection A, in which the Committee will present a synopsis of the parties' positions on the bribery conspiracy and false statement allegations, and subsection B, in which the Committee will provide background information about Judge Hastings and several others who figure

prominently in the evidence, subsections C through F will relate the evidence in essentially chronological terms. Subsection G will discuss, in summary fashion, the evidence that pertains to the individual false statement articles. Section III will present the evidence on the wiretap allegation, which is the subject of Article XVI. Article XVII, which charges that the conduct charged in the other sixteen articles has brought disrepute on the federal courts and the administration of justice, is not treated separately in the report.

The organization of the report reflects several judgments by the Committee about how best to prepare a summary that will assist the Members of the Senate in understanding the case. First, in order to tell as coherent a story as possible, uncontested facts are integrated with the evidence of the parties on contested issues of fact. That evidence has been gathered into a series of "Statement of Evidence" sections which appear in parts II(C)–(G) and III of this report. In so doing, the Committee has sought to state clearly when there is conflicting evidence on any factual matter. Also in the interest of clarity, the Committee has not attempted to present every fact to which the parties might attribute some significance. A yet more detailed statement of evidence in the case can be found in the parties' statements of contested and uncontested evidence, which they were asked to submit to the Committee to aid in the preparation of this report. Those statements are reprinted in part 2C of the hearing report at pages 3001–3271.

Second, this is a case in which much of the controversy is over the proper inferences to be drawn from facts, rather than over what the facts themselves are. For example, the events of the *Romano* case are of record and undisputed. Office diaries, hotel, travel and telephone billing records, and recorded conversations further establish a host of undisputed facts regarding the physical presence, actions, and words of Judge Hastings and others. The inferences to be drawn from particular

series of events are, however, in regular and marked dispute. For that reason, the Committee has concluded that it cannot simply recount facts in evidence without also providing some understanding of the lens through which each party sees that evidence. Accordingly, the Committee will, throughout Sections II(C)–(G) and III, introduce each of its Statements of Evidence with an "Overview" that presents the Committee's understanding of the relationship of that portion of the material to the case as a whole, as well as what it understands to be the key issues raised by that evidence. The Committee will then conclude each of its recitations of the evidence with a discussion of "The House Perspective" and "Judge Hastings' Perspective" on that particular portion of the case.

It is important, however, to emphasize that the parties will argue their own cases, both in written briefs that will be filed in the weeks ahead and in summation before the Senate. The Committee's statements about the views of the parties are intended only to help in the presentation of the evidence, and not to substitute for the parties' own marshaling of facts and arguments in support of their positions. Indeed, Judge Hastings questions the validity of the very process of trying to report a comprehensive statement of the evidence in the case. He asserts that that process may suggest that the evidence is complete, or that it is possible to reach a fair conclusion based only on evidence that is in the record. As the Senate will see in Judge Hastings' presentation of his defense, he believes that much of the important evidence in this case has been irretrievably lost through the passage of time.

The Committee, too, is mindful of the perils inherent in this task. The Committee's report is meant to be a neutral statement that neither explicitly nor implicitly urges a particular result in the case, or on any aspect of it. The format of its presentation, which seeks to set the views of the parties side by side, should not be read as a

statement by the Committee that the evidence is, in the end, equally weighted. A judgment about the weight of the evidence is clearly a decision for each Senator, to be made after studying the record and considering the arguments of the parties.

In accordance with its limited mandate, the Committee as a whole takes no view of the evidence, and the views of its members will be expressed individually in due course. The effort by members to withhold judgment during the hearings did not preclude, however, expressions of their concerns during the questioning of witnesses. The frank expressions of those concerns permitted witnesses to respond on the record. Thus, questions from members gave Judge Hastings the opportunity to describe to the Committee his attitude toward William Borders in light of the injury that Judge Hastings contends Borders inflicted upon him (Hastings, 2B at 2401–02); to explain how he could have been unaware of Borders' corrupt side (*id.* at 2414–15); to explain why, in his opinion, Borders has refused to provide the testimony which Judge Hastings contends, if given truthfully, would exonerate him (*id. at* 2424–25); and to comment on Borders' explanation of his refusal to testify (*id.* at 2435).

Finally, the Committee wishes to voice a cautionary note at the outset to avoid the possibility of unfair prejudice to Judge Hastings. The evidence before the Committee, as will be reflected in the following summary, describes a possible second bribery conspiracy, between William Borders and the now deceased Santo Trafficante who, in 1981, also had a criminal case pending in Judge Hastings' court. That evidence was received in the context of testimony describing the origin of the undercover operation that ultimately led to Borders' arrest on October 9, 1981, and the subsequent indictment of Judge Hastings and Borders for conspiracy to solicit a bribe from the Romano brothers. It should be clear that neither the United States in any criminal in-

dictment, nor the House of Representatives in this impeachment, has charged Judge Hastings with any offense relating to Trafficante.

II. THE BRIBERY CONSPIRACY AND FALSE STATEMENT CHARGES: ARTICLES I–XV

A. SYNOPSIS OF THE PARTIES' POSITIONS

1. Principal Elements of the House Bribery Conspiracy Case

Judge Hastings and William Borders, a prominent Washington, D.C. attorney with a criminal law practice, were longtime professional colleagues and friends. The House contends that the two worked in concert to solicit a bribe from Tom and Frank Romano, two brothers whose racketeering case was pending before Judge Hastings. While presiding over the *Romano* case in December, 1980, Judge Hastings became aware of evidence suggesting both that the Romano brothers had access to large sums of cash, and that they were willing to make payoffs. According to the House, in March, 1981, Borders approached William Dredge, a peripheral figure in the Miami underworld, and asked Dredge to find out what kind of people the Romanos were. According to Dredge, he reported back to Borders that he had made inquiries, and that he had learned the Romanos were "stand-up" people, meaning they could be trusted to keep a confidence. Borders then reportedly asked Dredge to approach the Romanos to advise them that a Washington attorney could take care of their case for them. Dredge testified that he communicated that message to the Romanos through an intermediary but did not seek to establish any further contact with them after his initial approach. He did, however, lead Borders to believe that he continued to be in touch with the Romanos.

The House sought to establish from telephone toll records, message slips, airline travel records, and other proof, that Judge Hastings and Borders were in communication at times which corresponded to significant

events in the *Romano* case and which were proximate to communications between Borders and Dredge. Two early events around which this pattern was evident were Judge Hastings' postponement of the Romanos' scheduled sentencing on May 11, and their sentencing on July 8. According to the House, Judge Hastings postponed sentencing on May 11 to give the Romanos more time to respond to the bribe overtures that Borders had communicated to the Romanos through Dredge. On July 8, Judge Hastings sentenced the Romanos to prison, notwithstanding their age, lack of prior record, and Tom Romano's poor health, and refused to modify the substantial forfeiture of their assets which he had previously decreed, notwithstanding a recent appellate decision that required him to reduce the forfeiture. The House suggests that Judge Hastings' purpose was to induce the Romanos to reflect further on the benefits of responding to Borders' overtures.

In July, 1981, Dredge, armed with his knowledge of Borders' activities and what Borders had told him about Judge Hastings, approached the Government to make a deal for himself on federal drug charges pending against him in Maryland, for which he had been arrested in May. Dredge agreed to introduce a Government undercover agent, posing as one of the Romano brothers, to Borders. On September 10, Dredge called Borders and reported that the Romanos were "ready to deal." Borders then traveled to Miami on September 12, and met with a retired FBI agent, H. Paul Rico, who had been recruited by the FBI to pose as Frank Romano. Borders and Rico met and agreed that in return for $150,000 the Romanos' prison sentences would be changed to probation. They further agreed upon two "shows of proof" that Judge Hastings was actually working in concert with Borders, as Borders claimed. First, Borders would arrange for Judge Hastings to have dinner at a specified time and place, namely, the Fontainebleau Hotel in Miami, at 8:00 p.m., on Septem-

ber 16, 1981. Second, within ten days after Rico made a down payment on the bribe money, Judge Hastings would issue an order returning a substantial portion of the Romanos' property that he had previously ordered forfeited. Following the issuance of that order, the balance of the bribe would be paid to Borders. The Romanos would then withdraw their pending appeals, so that Judge Hastings, as the trial judge, would have authority to fulfill Borders' promise by granting a motion to reduce their sentences from imprisonment to probation.

Judge Hastings did appear for dinner at the Fontainebleau Hotel on September 16, by 8:00 p.m., as Borders promised. On September 19, former agent Rico paid Borders $25,000 as the down payment. At that time, Borders reiterated that an order remitting a substantial part of the *Romano* forfeiture would issue within ten days, by September 29.

An order was issued by Judge Hastings returning approximately $850,000 of the $1,162,016 that the Romanos had forfeited, but not until October 6. During the first few days in October, Rico called Borders repeatedly to find out why the order had not yet been issued, and these conversations, tape recorded by the FBI, were followed by phone calls from Borders to Judge Hastings' chambers or home. Then, on October 5, Judge Hastings instructed his law clerk to finish the *Romano* order "that day." The order was typed, signed, and mailed out special delivery the next day, October 6, in response to Judge Hastings' suggestion to his courtroom deputy that it was urgent.

Judge Hastings and Borders spoke by telephone on October 5, in a call that was also recorded by the FBI. The call was literally about "letters for Hemp"—that is, letters that Judge Hastings and Borders purportedly were preparing on behalf of a mutual friend, Hemphill Pride, to assist with Pride's personal and professional difficulties. However, the House asserts that this was a

coded telephone conversaton in which Borders was really telling Judge Hastings that he had received the first $25,000 of the Romano bribe and expected to receive the remaining $125,000, and in which Judge Hastings, reassured that the bribery deal was still on track despite his delay in issuing the *Romano* order, in return committed to send off the order the next day.

On October 7, Rico and Borders arranged for Rico to pay the $125,000 balance due on the bribe in Washington, on October 9. This was a day when Judge Hastings would join Borders in Washington to attend a boat ride honoring Borders for his recent service as president of the National Bar Association. Rico paid the $125,000 to Borders at the Twin Bridges Marriott Hotel in Arlington, Virginia, and Borders was arrested on the spot. The FBI immediately attempted to persuade Borders that he should cooperate with their investigation, but Borders refused.

FBI agents sent word through Borders' attorney to Judge Hastings that they wished to speak with him. When Judge Hastings learned of Borders' arrest and the FBI's desire to speak with him, he did not contact the FBI. Instead, Judge Hastings precipitiously left Washington, not checking out of his hotel, picking up his dry cleaning or phoning the airlines for available flights. A direct flight to Miami, where his car was parked, was available at Washington National Airport, located approximately ten minutes from the hotel. Judge Hastings, however, took a $50 hour-long cab ride to the Baltimore-Washington International Airport where he switched from pay phone to pay phone making calls, and flew to Fort Lauderdale, where he rented a car. According to the House, Judge Hastings' reaction to the news of Borders' arrest was, if not flight, a panic-driven effort to evade the authorities until he had had time to put together his story.

For the House, Judge Hastings' participation with Borders in the *Romano* bribery scheme is demonstrated

by: (1) the repeated coincidence of documented contacts between Borders and Judge Hastings at significant junctures of the *Romano* case; (2) the detailed inside information about events in the *Romano* case which Borders possessed and passed to Rico and Dredge, information which the House alleges could have come only from Judge Hastings; (3) Judge Hastings' appearance and conduct at the Fontainebleau Hotel on September 16; (4) the allegedly coded conversation between Judge Hastings and Borders on October 5; (5) after months of inactivity in the case, the hurried issuance on October 6 of the order returning the Romanos' forfeited property at a time shortly after Borders had promised that the order would issue; and (6) Judge Hastings' conduct on October 9 upon learning of Borders' arrest.

2. Principal Elements of Judge Hastings' Defense to the Bribery Conspiracy Case

Judge Hastings' defense is that he is an innocent man, called before the Senate on a "circumstantial case that was shaky at best" and that was created through "an investigation that didn't finish." (Respondent's Post-Trial Statement of the Case, 2C at 3184–85). Judge Hastings unequivocally denies that he participated in any bribery scheme with Borders:

> Mr. ANDERSON. Prior to October 9, 1981, did you have any knowledge about Borders' corrupt scheme to extract $150,000 from the Romano brothers?
>
> Judge HASTINGS. No, sir.
>
> Mr. ANDERSON. Prior to October 9th, did you have any knowledge about any of the reported corrupt schemes in which Mr. Borders may have been engaged?
>
> Judge HASTINGS. No, sir.
>
> Mr. ANDERSON. Did you ever conspire, discuss, or otherwise knowingly participate in Mr. Borders' corrupt scheme to extract money from the Romanos?
>
> Judge HASTINGS. Absolutely not.

> Mr. ANDERSON. Did you ever knowingly conspire, discuss, or otherwise participate in any of Mr. Borders' reported corrupt schemes?
>
> Judge HASTINGS. No, I did not, Professor Anderson.

(Hastings, 2B at 2209–10).

Having declared his innocence, Judge Hastings contends that the House has utterly failed in its burden to prove his guilt:

> The House assumed the burden of proving its accusations. It has failed. The massive data it has presented can, however, be marshalled to leave suspicion and doubt. But it is respondent who is entitled to the benefit of any doubt that remains.

(Respondent's Post-Trial Statement of the Case, 2C at 3161).

In presenting his defense, Judge Hastings challenges the evidence marshaled by the House against him, and attacks the quality and completeness of that evidence. While much of the mass of detail presented by the House demonstrates that Borders solicited a bribe, Judge Hastings argues that there is little or no evidence that he knowingly participated in Borders' scheme. Only two discussions between Judge Hastings and Borders were recorded. One of these, a telephone call on October 8, 1981 concerning flight plans, is undisputedly innocuous. The other is the October 5, 1981 telephone conversation concerning "letters for Hemp," which Judge Hastings contends was exactly what it purports to be—a conversation concerning letters Judge Hastings was going to draft to solicit support for Hemphill Pride.

The mass of data presented by the House, Judge Hastings argues, is fatally incomplete. Witnesses that may have buttressed Judge Hastings' views of facts or have offered alternative explanations as to how Borders obtained his information about the *Romano* case have died or become incompetent to testify. Memories have dimmed with time. Documents that may have supported

Judge Hastings' testimony, including Borders' earlier records from which one could compare their previous contacts with those in evidence here, telephone records for Hemphill Pride, and back-up telephone records for the L'Enfant Plaza Hotel, were apparently not collected during any of the investigations or have since been lost. Furthermore, decisions made during the initial investigation—such as the FBI's decision to arrest Borders on October 9 at the time Borders received payment from the undercover agent rather than "letting the money run"—further deprived Judge Hastings of evidence he asserts would prove his innocence.

Even with its mass of available data, Judge Hastings argues that the House has failed to demonstrate a credible motive for him to enter into a bribery scheme with Borders. By all accounts, including the FBI's, Judge Hastings is a man who lived within his means and for whom financial reward has never been a primary or significant objective. Witnesses who knew Judge Hastings and his work described him as a man of high integrity, excellent character, and an outstanding trial judge. (Respondent's Post-Trial Statement of the Case, 2C at 3163–65).

Judge Hastings particularly objects to what he calls "telescoping" by the House, *i.e.*, juxtaposing Judge Hastings' actions, most frequently contacts between Judge Hastings and Borders, with events in the *Romano* case without considering other events independent of that case. The "telescoping" inherent in the House's presentation of evidence, Judge Hastings argues, magnifies and distorts the importance of events, like a brief telephone call or even a dinner engagement, that were relatively minor occurrences in his extremely busy life as a federal judge and a spokesman for an important community point of view.

Judge Hastings attacks as a prime example of "telescoping" the House's allegation that he repeatedly contacted Borders at significant junctures in the *Romano*

case. Although the passage of time has made it difficult to reconstruct the specific timing and content of many of his contacts, Judge Hastings contends that he had legitimate professional and personal reasons to speak and to visit with Borders throughout the spring and summer of 1981. While Borders was president of the National Bar Association, Judge Hastings arranged a reception at the NBA's midwinter meeting in late-February, 1981. Judge Hastings proposed, then solicited support for, certain programs he wanted to hold during the NBA's annual summer meeting, and Judge Hastings and Borders attended that NBA summer meeting in Detroit in July, 1981. In addition, during the spring and summer of 1981, Borders was challenging attempts to remove him from the District of Columbia Judicial Nomination Commission, and discussed this matter with Judge Hastings. And, Judge Hastings asserts, he and Borders repeatedly discussed providing assistance to their mutual friend Hemphill Pride. These and other innocent matters, Judge Hastings contends, explain his contacts with Borders.

As a second example of telescoping, Judge Hastings attacks what he views as the House's failure to take account of his extremely heavy court docket, as well as his substantial number of speaking engagements and other meetings. In September of 1981, for example, Judge Hastings' itinerary shows trips to Harrisburg, Pennsylvania, and Orlando, Florida, for speaking engagements and to Gainesville, Florida, for a fundraising dinner. During the same period, as a member of one of the busiest federal courts in the nation, Judge Hastings had an extremely full courtroom calendar and faced the imminent departure of one of his law clerks. These factors, Judge Hastings argues, better account for the issuance of the *Romano* forfeiture order on October 6, 1981, than does the House's allegation of a conspiracy with Borders.

To the extent that the House relies upon Borders' apparent knowledge of events in the *Romano* case, Judge Hastings' dinner at the Fontainebleau Hotel, and Borders' predictions as to the timing and content of the *Romano* forfeiture order as proof of a conspiracy, Judge Hastings argues that these factors appear suspicious because that is *precisely* what Borders intended. (Respondent's Post-Trial Statement of the Case, 2C at 3174–75.) In Judge Hastings' view, Borders was "rainmaking," that is, feigning an ability to influence the outcome of events in the courtroom. According to Judge Hastings, Borders coupled his general knowledge of the legal system and the way judges' chambers and law clerks operate with publicly available information and possibly information from an unknown source, to create the impression that he was working with Judge Hastings. When it became necessary for Borders to produce Judge Hastings at a specific location as proof of the Judge's complicity, Borders used their friendship to manipulate the Judge into dining at the Fontainebleau Hotel on September 16, 1981.

Judge Hastings further argues that his failure to issue the *Romano* forfeiture order in accordance with the schedules agreed upon by Borders and Rico is strong proof that he was not a part of Borders' scheme. On September 19, Borders had promised that the order would be issued within ten days of that date, *i.e.,* by September 29. Although Judge Hastings' clerk could have drafted the order at any time the Judge had asked, he did not instruct his clerk to do so while the ten-day period was running. According to Judge Hastings, he directed his law clerk to complete the order on October 5 because he was concerned that, in light of his own heavy travel schedule for October, the order would not be finished before his clerk left for a new job. Judge Hastings argues that had he conspired with Borders, he surely would have issued the forfeiture order in compliance with Borders' promises.

At the 1983 trial, the Government had its opportunity to present its strongest case at a time when problems of lost witnesses and documents were not as acute; it did so with great care and skill, and it lost. The House, Judge Hastings contends, has presented largely the same evidence here, under circumstances where Judge Hastings is less able to defend himself because of the passage of time. According to Judge Hastings, the charges by the House fail to acknowledge the wisdom of twelve American citizens who heard essentially the same evidence and substantially the same charges, much closer in time to the events at issue, and declared him "not guilty."

3. The House Response to Judge Hastings' Defense, and Its Position on the False Statement Articles

The House alleges that the factual matters of defense presented by Judge Hastings both in his 1983 trial and in the current proceedings are a sham, and that in large measure those matters consist of false testimony and fabricated evidence. The evidence introduced by the House to support its contention that Judge Hastings lied at his criminal trial is urged for a number of purposes. First, that evidence is intended to support particular articles of impeachment that accuse Judge Hastings of having made false statements. Second, evidence introduced to show that Judge Hastings gave false testimony and fabricated physical evidence in order to defend himself at his criminal trial is seen by the House as further demonstration of his guilt on the bribery conspiracy. Third, the House contends that Judge Hastings' argument that the Senate should give deference to the jury's verdict of acquittal in 1983 is defeated by evidence that that victory was improperly won.

In brief, the false statement articles charge that Judge Hastings lied at his 1983 criminal trial:

> by denying his participation in the *Romano* bribery conspiracy with William Borders (Articles II–IV);

by denying that he appeared at the Fontainebleau Hotel in Miami, Florida, on September 16, 1981, in order to demonstrate his participation in the bribery scheme (Article V);

by denying that he expected Borders to appear at the Sheraton Hotel in Washington on September 12, 1981 (Article VI);

by denying that he instructed his law clerk to finish the order returning the Romanos' forfeited property on October 5, 1981, as part of the bribery scheme (Article VII);

by denying that his October 5, 1981 phone call with Borders was a coded conversation in furtherance of the *Romano* bribery (Article VIII);

by testifying that draft letters of assistance for Hemphill Pride, which he had tendered as evidence, were in fact written on October 5, 1981, and referred to in his telephone conversation with Borders that day (Article IX);

by testifying that he spoke to Hemphill Pride at three particular telephone numbers in 1981, and by identifying a phone number as a place where Hemphill Pride worked in July, 1981 (Articles X–XIII);

by testifying that on October 9, 1981, before leaving his hotel room at the L'Enfant Plaza Hotel, he called his mother and his then fiancee, Patricia Williams, who has served as one of his attorneys (Article XIV);

and by lying about his motives for leaving the Washington area via the Baltimore-Washington International Airport on October 9, 1981 (Article XV).

4. Judge Hastings' Response

Judge Hastings categorically denies that he gave any deliberately false testimony either at his 1983 trial or here. Judge Hastings does concede that he made certain errors in his 1983 trial testimony, particularly regarding the telephone numbers at which he thought he had

called Hemphill Pride. He asserts, however, that those were honest mistakes and that when he testified in his 1983 trial, he believed that his testimony was truthful and correct. Judge Hastings further asserts that the prosecutor at his 1983 trial made arguments attacking the truthfulness of his testimony and the genuineness of the letters for Pride that were identical to those made here by the House. He argues that the Senate should not attempt to second-guess the jury and reassess his credibility.

B. BEFORE 1981: BACKGROUND INFORMATION

The events that are central to the bribery and false statement allegations against Judge Hastings occurred mostly in 1981. The parties, however, also produced evidence concerning the pre-1981 lives of Judge Hastings and other individuals—William Borders, Hemphill Pride, and William Dredge—whose names repeatedly surface in the evidence. That information, as well as a brief introduction to the *Romano* case, are presented here to provide a context for evaluating the matters discussed in subsequent sections of the report.

1. Judge Hastings

Judge Hastings was born in Florida in 1936. He was raised chiefly by his grandmother while his parents worked in domestic service in homes outside of Florida. (Hastings, 2B at 2210–11). He was graduated from Fisk University, attended Howard University Law School for two years, and was admitted to the Florida Bar after receiving his law degree from Florida A&M in 1963. (*Id.* at 2211).

Judge Hastings entered into a general legal practice in Fort Lauderdale that included the representation of criminal defendants and civil rights litigation. He was active in civic, political, and community affairs. (*Id.* at 2211–13). He "made a good living" at the practice of law, but "never really had a substantial sum of money at any one time." (*Id.* at 2213). In 1977, Florida Gover-

nor Reuben Askew appointed him to the circuit court, the state's highest trial court of general jurisdiction. (*Id.* at 2214).

Judge Hastings was appointed in 1979 by President Carter to be a judge of the United States District Court for the Southern District of Florida. (*Id.* at 2215). Although he did not know what William Borders may have done to help secure his federal judgeship and credits his appointment mainly to knowing President Carter and former U.S. Senator Richard Stone of Florida, Judge Hastings testified that "I believe that [Borders] helped me." (*Id.* at 2337–38).

Judge Hastings introduced testimony of his character and reputation for truthfulness and honesty from, among others, Henry Latimer, a practicing attorney in Florida and a former state circuit judge (Latimer, 2B at 1704); Edward Rogers, a state circuit judge in Florida (Rogers, 2B at 1717); and United States District Judge Matthew J. Perry of the District of South Carolina (Perry, 2B at 1732). With respect to Judge Hastings' judicial work, the Chief Judge of the Southern District of Florida, James L. King, testified that Judge Hastings "did his work well. He was diligent in his work. He worked long hours. . . . He was, has always been courteous to lawyers." (King, 2A at 1243).

Judge Hastings offered evidence that he was motivated in his professional life, not by a desire for financial rewards, but by a desire to "be a catalyst for change. To help the downtrodden, unpopular causes, people." (McCrary, 2A at 1457). Former Judge Latimer testified that in the time he knew "Judge Hastings, going back to 1962, he has never been a person who was motivated by money, . . ." (Latimer, 2B at 1703). Although he was able to pay his bills in private practice, his practice was not a financial success. In fact, his appointment to the state bench resulted in a substantial increase in income. (Hastings, 2B at 2213–14).

Judge Hastings has lived with his mother, who has been disabled for some time, since the mid-1970s. (Hastings, 2B at 2269). The House elicited testimony from Judge Hastings' courtroom deputy, Marilyn Carter, that she had told FBI agents that Judge Hastings, who was living in a rented condominium, was interested in purchasing a home in 1981, but had not, due to the cost. (Carter, 2B at 1788). Nevertheless, Judge Hastings' financial records were reviewed by the FBI and "there was nothing in any of them that would reflect other than a normal daily course of business." Judge Hastings' lifestyle appeared to FBI investigators "to be within the means of his salary." (Murphy, 2A at 400).

2. William Borders and his Relationship with Judge Hastings

Background information about William Borders, who has refused to testify before the Committee and elsewhere, is necessarily scanty. Borders was graduated from Howard University Law School in the mid-1960s. By 1981, Judge Hastings and Borders had known each other for 11 or 12 years. (Stip. No. 4, 2A at 676). Judge Hastings characterized Borders as "[o]ne of my good friends, but not even close to being called one of my best friends." (Hastings, 2B at 2457).

By January, 1981, Judge Hastings had a longstanding personal and professional relationship with Borders that stemmed, in large part, from their active roles in the National Bar Association. (Stip. No. 5, 2A at 676). Judge Hastings described himself as "sort of a player, if you will, in the National Bar Association that never sought to or wanted to hold office. But I believe that I had a considerable amount of influence with those persons who were elected, . . ." (Hastings, 2B at 2219--20). Over the years, Borders rose through a progression of offices in the Association. By October, 1979, when he attended Hastings' investiture as a federal judge, Borders was its president-elect. Between July, 1980, and July

1981, Borders served as president of the National Bar Association.

The Committee received testimony that "Borders was a very important person" in President Carter's 1976 campaign (Chisholm, 2B at 1883), and that he was also active in President Carter's 1980 reelection campaign. (Brown, 2B at 1908–09). In July, 1980, the President announced Borders' appointment to a five-year term as a member of the District of Columbia Judicial Nomination Commission, a body of presidential, mayoral, and other appointees, which, at the time, had the responsibility to submit to the President lists of candidates for appointment to the local courts in the District of Columbia. Pub. Papers (Pres. Carter) 1292 (1980). Later that month, the White House announced that Borders would serve as a public member of the United States delegation, chaired by former Attorney General Griffin Bell, to a November, 1980 meeting in Madrid, Spain, to review human rights progress under the 1975 Helsinki Accords, Pub. Papers (Pres. Carter) 1438 note (1980). Judge Hastings testified that he talked to Borders several times about Borders' trip to Europe with former Attorney General Bell. (Hastings, 2B at 2424). Among friends of Judge Hastings, Borders was perceived to be well-connected with the Carter Administration. (Latimer, 2B at 1704).

3. Hemphill Pride and his Relationship with Judge Hastings and William Borders

Judge Hastings and Hemphill Pride, whose home is Columbia, South Carolina, were close friends. They are the same age. They were graduated together from the law school at Florida A&M in 1963, where they were roommates. Each is the godfather to the other's first son. (Pride, 2A at 676). Pride described his close bond with Judge Hastings: "I had two brothers—both died when I was about two years old, so I had no brothers or sisters—Al was an only child, Al was probably the closest person to a brother to me that I have ever known in

my life. . . ." *(Id.* at 684). Judge Hastings had reciprocal feelings. Pride was "my best friend. . . . And through the years, we shared almost a brotherly—as much as I believe brothers share in the way of a relationship." (Hastings, 2B at 2436).

Pride also was a friend of William Borders, although that friendship, which Pride dated from a National Bar Association meeting in the early 1970s, was neither as long nor as strong as Pride's friendship with Judge Hastings. (Pride, 2A at 676–77). When he was indicted for misuse of rents from an apartment complex that had been financed under a federal mortgage interest subsidy program, Pride turned to Borders for help. Borders arranged for him to meet John Shorter, the criminal defense attorney who ultimately represented Borders when Borders was arrested on the bribery charges. (Pride, 2A at 707–08).

In 1977, Pride was convicted on the rent misuse indictment. In October, 1979, while Pride's appeal was pending, Judge Hastings insisted that Pride be present at his judicial investiture ceremony notwithstanding Pride's conviction. Pride began serving his three-year prison sentence in March, 1980, ultimately spending one year in prison and two months in a halfway house. In July, 1980, Pride wrote to request that Judge Hastings help to raise funds for the preparation of a petition for post-conviction relief. (House Ex. 126, 3A at 518). Judge Hastings did not respond. When, after several calls from Pride, Judge Hastings and Pride finally spoke, Judge Hastings told him it would be improper for a federal judge to raise funds for legal fees, and that he believed that the document which Pride had drafted had no merit. (Pride, 2A at 684).

Subsequently, in October, 1980, Pride's mother wrote to Judge Hastings, described the urgent financial circumstances of Pride's family, and pleaded with Judge Hastings to ask the warden to release Pride to a halfway house. (Resp. Ex. 108, 3B at 2839). Judge Hastings

testified that he called the warden, telling him that he was calling at Pride's request, that he thought it inappropriate to make such a request in his judicial capacity, and that he was calling only because "I wanted to at least have the man have peace of mind." (Hastings, 2B at 2221). While Pride was incarcerated at Maxwell, Judge Hastings sent his mother $75 and his wife $50, and gave Pride $100 on a visit to him. (Pride, 2A at 710).

4. William Dredge

William Dredge was the informant who alerted the Government to Borders' effort to solicit money from defendants in Judge Hastings' court. The parties differ dramatically both in the role they assign to Dredge in these events and the extent to which they are willing to credit his testimony. In the House view, Dredge was a minor player in the *Romano* bribery scheme itself, but provided accurate—and ultimately corroborated—testimony that helps to build the structure of circumstantial evidence against Judge Hastings. In Judge Hastings' view, Dredge is a chronic liar whose story changes with each telling, and who, in fact, played a role throughout the entire course of events, motivated by twin desires to avoid jail on drug charges lodged against him in 1981 and also for a share of the bribe money.

Dredge was born in Washington, D.C., in 1927. His criminal record shows arrests for auto larceny dating back to 1943. (Resp. Ex. 6, 3B at 2336). Dredge testified that he was acquitted of armed robbery, for which he had been arrested in 1954, but was convicted of assault with a deadly weapon and served four to six months. (Dredge, 2A at 153, 154). In the mid-1950s, Dredge was convicted for an offense involving the manufacturing and cashing of false payroll checks, and was sentenced to up to five years in a federal prison. (Dredge, 2A at 152–53; Resp. Ex. 6, 3B at 2338). Between 1964 and 1974, during which period Dredge had moved to Miami and opened an antique store (Dredge, 2A at 133), other ar-

rests appear on his record, but no convictions are shown.

Beginning in 1975, Dredge for several years provided substantial information to Jimmy Harmon, a special agent of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms. Harmon testified that Dredge supplied information about a bombing in which deaths had resulted, and that Dredge's information led to convictions. (Harmon, 2B at 1859). Dredge also aided Harmon in a major firearms investigation, providing information that Harmon deemed significant in resolving the case. (*Id.* at 1860). Beyond these particular matters, Dredge provided Harmon with information "on a regular basis." (*Id.* at 1870). Harmon testified that the Department of the Treasury has a system for rating the quality of informants, and that Dredge was rated "excellent." (*Id.*)

Dredge testified that his contacts with Borders in 1981 came about because of Dredge's association with Joseph Nesline, a now elderly and infirm Washington figure with a long criminal past, whom Dredge described as "a local gambler of some repute." (Dredge, 2A at 165). An FBI witness testified that Nesline had considerable organized crime connections in Florida as well as Washington. (Shull, 2B at 1822). Dredge testified that he met Nesline in the 1940s and had known him for more than forty years. (Dredge, 2A at 165). In response to a question from the Committee as to why he became involved with Borders in 1981, Dredge related how Nesline had helped him years ago when Dredge could not pay his rent, saying: "I had and have a lot of respect for Joe Nesline. He has truly been a great friend of mine. In this particular case, I can't say that I have returned him in kind. But because of Joe, I did what I did with Borders out of friendship. It had nothing to do with money, absolutely nothing to do with money, and that's the best I can tell you." (Dredge, 2A at 169).

Dredge's incentive to provide information to the Government about Borders' schemes stemmed from an April, 1981 federal indictment against Dredge in Maryland. In early January, 1980, Dredge had given an old friend, who, purportedly unknown to Dredge, was an escapee from the Maryland House of Detention, a quantity of quaalude pills to take on consignment to Maryland. Between February and May, 1980, Dredge supplied others with additional quantities of quaalude pills for shipment to Maryland. (Resp. Ex. 5, 3B at 2332).

5. The Romano Case

The presentence reports on Tom and Frank Romano, introduced into evidence by Judge Hastings, provide background information about the Romanos and their offense. (Resp. Ex. 1, 3B at 1971; Resp. Ex. 118, 3B at 2868). Tom Romano was born in Italy in 1916. His brother Frank was born in Connecticut in 1920. Tom studied construction and concrete work, completing a high school degree at night during the Depression. Frank's formal schooling stopped in 1935 when he left school to help to support his family. During the Second World War, Tom helped to supervise the construction of several defense projects in Nevada. Frank served in the Army Air Corps between 1942 and 1945. The presentence report states that Frank's "[r]ecords reflect an outstanding military record" (Resp. Ex. 118, 3B at 2889), and that he was honorably discharged with numerous decorations. Tom and Frank Romano spent their entire adult lives in the construction business. Neither had a criminal record until their indictment in November, 1978.

The Romanos were charged in a twenty-one count indictment in the Southern District of Florida with violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and related offenses, including theft and embezzlement from an employees' benefit plan. The Government accused the Romanos of depositing a portion of a construction loan from an employee pension

fund in their personal account, of inflating the amount of construction costs, and of using the proceeds from these illegal acts to purchase a restaurant.

The case was assigned to Judge Hastings a few days after his investiture in October, 1979, and came to trial on December 2, 1980. During the course of the jury trial, the prosecutor made a proffer of evidence to Judge Hastings that Tom Romano had previously engaged in transactions to generate cash to bribe building inspectors or to pay kickbacks. (Deichert, 2A at 27). The Government also presented evidence to Judge Hastings that the fraud for which the Romanos had been prosecuted had yielded $1.2 million, that the Government had been able to trace only a fourth of that amount, and that at one time the Romanos had accumulated more than one-half million dollars in cash in a safety deposit box. (*Id.*). On December 23, 1980, the Romanos were convicted on all counts of the indictment. (Stip. No. 8, 2A at 26; House Ex. 2, 3A at 9).[8]

C. THE EVENTS BETWEEN THE FEBRUARY 20, 1981 FORFEITURE HEARING AND THE BEGINNING OF THE UNDERCOVER OPERATION ON SEPTEMBER 10, 1981

1. Overview

Following their December 23, 1980 convictions, the Romanos moved for a new trial based on alleged errors in Judge Hastings' conduct of the trial, or alternatively, for a judgment of acquittal. On December 30, 1980, Judge Hastings held an initial hearing on the Government's request that he order a forfeiture of certain of

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[8] One postscript is in order about the Romanos' convictions. In 1984, an appellate panel reversed their convictions on the ground that Judge Hastings had denied Tom Romano's Sixth Amendment right to counsel by ruling that he could not discuss his past or future testimony with his lawyer during a five-day trial recess when he was hospitalized. The court of appeals determined that a new trial for Frank Romano also was required. *United States v. Romano,* 736 F.2d 1432 (11th Cir. 1984). The Romanos, who are now both dead, were not retried.

the Romanos' financial interests. That request was made pursuant to the RICO statute, which, under certain circumstances, requires a convicted defendant to forfeit property which he obtained as a result of his illegal racketeering activities. On February 20, 1981, Judge Hastings held a second forfeiture hearing, reserved his ruling, and stated that he would schedule sentencing after receiving submissions by the parties and presentence reports. (Stip. No. 14, 2A at 28).

The events described in this section will cover the nearly seven months between February 20, 1981, and early September, 1981, when the Government secured William Dredge's cooperation in launching an undercover investigation of Borders and Judge Hastings. The events of that month-long undercover operation, which commenced on September 10, 1981, and which came to an end when Borders was arrested on October 9, 1981, will be described in sections II (D)–(F) of this report.

During the February–September period, Judge Hastings took several actions in the *Romano* case. On May 4, 1981, he granted complete relief to the Government by ordering the Romanos to forfeit $1,162,016 to the United States. On May 11, 1981, he postponed the sentencing of the Romanos which he had scheduled for that date. And, on July 8, 1981, he sentenced the Romanos to terms of imprisonment, stated orally from the bench that he would deny a motion by the Romanos to reconsider the forfeiture, and advised the parties that a brief written order would be issued. The evidence shows that Judge Hastings and Borders were periodically in telephone contact over the course of these months. As presented by the House, those contacts cluster around both the foregoing events in the *Romano* case and communications between Borders and Dredge, who testified that by March, 1981, Borders had sought to enlist him in communicating with the Romanos to solicit a bribe for Judge Hastings.

In this period, other significant activities occurred which may explain the communications between Judge Hastings and Borders. Both Borders, who, in July, 1981, completed his year-long presidency of the National Bar Association, and Judge Hastings engaged in Association activities. Hemphill Pride, who was released from prison in March, 1981, began his quest for financial security and the restoration of his right to practice law. According to Judge Hastings, it is these activities which explain most of his contacts with Borders; he contends that the pattern shown by the House is a contrived one, resulting from incomplete records and Dredge's lies.

Judge Hastings' conduct during these months presents three questions. First, did Judge Hastings postpone the sentencing of the Romanos from May 11 to July 8 as an initial sign that Borders could predict Judge Hastings' actions and to give the Romanos more time to join in the scheme? Or, as Judge Hastings contends, did he postpone sentencing simply because the Romanos' attorney moved for a continuance of their motion for new trial? Second, did Judge Hastings sentence the Romanos on July 8 to terms of imprisonment, notwithstanding their lack of prior criminal records and Tom Romano's poor health, and adhere to a substantial monetary forfeiture, in violation of a recent precedent of the Fifth Circuit Court of Appeals, in order to induce them to reconsider their reluctance to deal with Borders? Or, as Judge Hastings contends, are his actions on July 8 explained by the fact that the Government argued in favor of both prison time for the Romanos and a substantial forfeiture, and Judge Hastings agreed with the Government's position? Third, did Judge Hastings fail for several months to issue the brief order that he had promised on July 8, in order to provide yet more time for the Romanos to come around to the idea of dealing with Borders, or, as Judge Hastings urges, was the passage of time routine in light of the court's heavy docket?

The Statement of Evidence which follows will discuss this period in four subsections. The first covers the time between the February 20, 1981 forfeiture hearing and Judge Hastings' issuance of his first order on that matter on May 4, 1981; the second runs from May 4 to May 11, when the Romanos' sentencing was continued; the third follows the events through July 8, when the Romanos were sentenced; and the fourth, ending at the point when the Government, on September 10, began its undercover investigation of Borders and Judge Hastings, covers a relatively quiet period in the *Romano* case.

2. Statement of Evidence

a. Events through the Issuance of the First Forfeiture Order on May 4, 1981

On February 20, 1981, Judge Hastings held the second and final hearing on the Government's application for forfeiture of the Romanos' property. By April 8, the parties completed their briefing on the forfeiture issue. (Stip. No. 271, 2A at 28). On May 4, Judge Hastings, adopting all of the prosecution's proposed findings of fact, ordered the Romanos to forfeit $1,162,016 to the United States. (Stip. No. 17, 2A at 29; Deichert, 2A at 29). The May 4 forfeiture order cleared the way for consideration of the Romanos' new trial motion and sentencing on May 11.

Both the House and Judge Hastings presented evidence, which neither side contradicted, of communication between Judge Hastings and Borders during this period. On February 20, the day of the second forfeiture hearing, a three-minute call was placed at 7:30 a.m. from Judge Hastings' home telephone to Borders' home telephone. (Stip. No. 269, 2A at 507). Judge Hastings and Borders both spoke at a midwinter meeting of the Board of Governors of the National Bar Association, and the Judicial Council of the National Bar Association, held in Miami Beach between February 26 and

March 1. (Hastings, 2B at 2218–19; Resp. Ex. 74, 3B at 2585; Resp. Ex. 75, 3B at 2587).

Each party also presented uncontradicted evidence of communication between Judge Hastings and Borders in April and early May. On April 9, the day after the parties completed the briefing of the forfeiture issue, Judge Hastings called Borders' office and left a message for Borders to call "at office between 12 and 1." (Stip. No. 272, 2A at 507). At 12:15 p.m. that day, a call that lasted one minute or less was placed from a pay telephone in a corridor near Judge Hastings' chambers to a pay telephone in the Federal Courthouse in Washington, D.C. (McDonald, 2A at 524–25; House Ex. 31i, 3A at 283; House Ex. 198, 3B at 1719; House Ex. 200, 3B at 1720; House Ex. 201, 3B at 1722; House Ex. 222, 3B at 1905). The call was charged to Judge Hastings' home phone number. (McDonald, 2A at 524; House Ex. 201, 3B at 1722). Judge Hastings does not deny that he made the call but testified that he has no recollection of having done so. (Hastings, 2B at 2221).

On April 21, Judge Hastings distributed a proposal for two programs at the annual meeting of the National Bar Association and its Judicial Council which was to be held in Detroit in July. He sent a copy of the proposal to Borders, in his capacity as National Bar Association president, with the request "[p]lease let me hear from you on this matter, and our report that is due soon," (Resp. Ex. 145, 3B at 2918), and testified that he spoke with Borders about his proposals. (Hastings, 2B at 2222–23). On April 27 and 30, and May 1 and 4, Judge Hastings left a series of telephone messages for Borders at Borders' office; the May 4 message, which was left on the day that the forfeiture order was issued, was marked "urgent." (Stip. Nos. 277–79, 2A at 507; C. Rogers, 2A at 843–46; House Exs. 212–14, 3B at 1734–36).

While Judge Hastings looks to National Bar Association business, and also to their mutual interest in

Hemphill Pride who was released from prison in March, 1981, to explain Judge Hastings' and Borders' communications during this period (Hastings, 2B at 2221), the House juxtaposes those communications with Dredge's testimony that in March, 1981, Borders first asked him about the Romanos. Dredge testified that, in March, he met Borders in Washington, through Dredge's friend, Joseph Nesline. (Dredge, 2A at 76–77). According to Dredge, Borders asked Dredge, who was from South Florida, if he knew the Romano brothers. When Dredge said that he did not, Borders asked Dredge to inquire about whether the Romanos were "stand-up" people, which Dredge testified meant "trustworthy people in the underworld." (*Id.* at 77, 78). The House supports Dredge's testimony about his March meeting with Borders with documentation that Dredge flew from Miami into the Baltimore-Washington International Airport on March 5, and departed from that airport on March 8, 1981. (House Ex. 12, 3A at 197; House Ex. 13, 3A at 198).

Dredge testified that approximately two or three weeks later, motivated by his friendship with Nesline, he contacted a man named Willie Dara, who later died in a plane crash, and that Dara told Dredge that the Romano brothers were trustworthy. (Dredge, 2A at 77–78, 163, 168–69). Then, in communications which Dredge testified occurred in the first ten or twelve days of April, Nesline called Dredge and asked if he could give Dredge's phone number to Borders. (*Id.* at 78, 159). Dredge agreed that he could. (*Id.*). The House supports that testimony with evidence that Dredge's number appears in Borders' 1981 appointment book on the pages covering the week of March 30—April 5, 1981. (Murphy, 2A at 356; House Ex. 67, 3A at 393–94). Dredge testified that Borders then called him, that Dredge passed along the information that he had learned about the Romanos, and that Borders asked Dredge to contact the Romanos and tell them that there was a Washington at-

torney who could help them with their pending court case. (Dredge, 2A at 78).

Dredge testified that he then called Dara to set up a meeting with the Romanos. (*Id.*). Dara called back to say that the Romanos were out of town and that their manager, known as "Brother," would meet with Dredge. (*Id.* at 79). The House introduced hotel records to show that the Romanos were in California from April 7–11, 1981. (Sonnett, 2A at 174–75; House Ex. 26, 3A at 252).

According to Dredge, he and "Brother" met. (Dredge, 2A at 80). Dredge testified that he told "Brother" that he was an emissary for a Washington attorney who could help the Romanos with their case, and that if they had any interest, they could get back to Dredge through Dara. (*Id.*). In support of Dredge's testimony, the House elicited testimony from the Romanos' attorney, Neal Sonnett, that Tom Romano had, on April 13, 1981, called to tell him that the Romanos had received a call in California on April 8 or 9 from Phillip "Brother" Moscato. Moscato reportedly had told the Romanos that he (Moscato) has been told about a Washington "bigshot" who claimed that something could be done about the Judge. (Sonnett, 2A at 197). On April 16, the Romanos again telephoned Sonnett, this time to say that they believed that the offer of help was a setup and that there was no need to report it to the Government. (*Id.* at 198). An April 16, 1981 file memorandum created by Sonnett notes a phone call from Tom Romano on that date, as well as a previous call, concerning an attempt by "Brother Muscatto [sic] . . . to rip him off of some money." (House Ex. 25, 3A at 251).[9]

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[9] Judge Hastings strenuously objected to Sonnett's testimony and to his memorandum relating the calls that he received from the Romanos. The ground for the objection was the evidence included multiple levels of hearsay from dead, unavailable, and unreliable witnesses. (2A at 176–78, 183–85). The House argued that because the Romanos, who had died, were unavailable, and Moscato was ill and unable to travel to testify before the Impeachment Trial Com-

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Dredge testified that he never heard back from "Brother" regarding the offer of help on the Romanos' case (Dredge, 2A at 80), and never, at any time, had any contact with the Romanos themselves. (*Id.* at 80, 83). However, he strung Borders along by pretending that he was talking with the Romanos. Dredge testified that he told Borders, for example, that the Romanos were interested in doing business, but that they did not believe that Borders had actual influence over Judge Hastings. He told Borders that the Romanos had already lost $50,000 to someone else in an attempt to fix their case. (*Id.* at 83). Borders responded that "there was nobody else who could do business with the Judge but him" and that he would "hate to be in [the imposter's shoes] when it is found out." (*Id.* at 83–84). At Borders' urging, Borders and Dredge worked out a system of speaking with one another from pay phones; they spoke "continuously" about the *Romano* case, and most of these calls were from pay phones. (*Id.* at 82, 122, 149–50).

Judge Hastings introduced into evidence Dredge's testimony in May, 1985, before the Investigating Committee of the Eleventh Circuit's Judicial Council, in support of his claim that Dredge had fabricated his impeachment trial testimony about these communications with Borders.[10] It is Judge Hastings' view that Dredge's ear-

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mittee, the evidence was more probative than any other available evidence. Also, the House argued that credence should be given to Moscato's statements to Tom Romano because they were against his interest, as he might be criminally liable for conveying a bribe offer, and that the Romanos had an incentive to tell the truth to their attorney. (2A at 176–77). By vote of the Committee, Judge Hastings' objection to the evidence was overruled, based on the Committee's view that the question of what weight, if any, to give this evidence was for each Senator to decide. (2A at 186–90).

[10] Following Judge Hastings' acquittal, a complaint was filed against him by two district judges under 28 U.S.C. § 372(c) (1982), a section of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. That section provides for the appointment, by the chief judges of the federal judicial circuits, of committees

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lier and allegedly more accurate testimony, as well as the absence of documented phone contacts between Dredge and Borders before the beginning of May, strongly suggest that Dredge and Borders were not in contact about the *Romano* case until late April or early May, 1981. (Respondent's Post-Trial Statement of the Case, 2C at 3186).

In his appearance before the Judicial Council's Investigating Committee, Dredge first testified that he believed that he did not become involved with Borders in the *Romano* scheme until Borders briefly represented him in connection with that indictment. (Resp. Ex. 2 at 45–47, 3B at 1994, 2018–20). Dredge's indictment on federal drug charges in Maryland was sealed when it was returned on April 29, 1981. (House Ex. 16, 3A at 211–12). Dredge was arrested on May 10. (Dredge, 2A at 85). During his Investigating Committee testimony, Dredge recalled that his association with Borders preceded his

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comprised of circuit and district judges to investigate charges of misconduct against federal judges. Dredge was summoned to appear in May, 1985, before the Investigating Committee that was appointed to hear the allegations against Judge Hastings. Dredge objected that his plea bargain provided that the Government would not call him as a witness before a grand jury or at trial, but the Investigating Committee overruled the objection on the ground that the plea bargain did not cover administrative investigations into judicial misconduct.

Early in Judge Hastings' counsel's cross-examination of Dredge before the Senate Committee, Dredge asked to make a statement. In an effort to explain inconsistencies between his 1985 Investigating Committee testimony and his testimony before this Committee, he stated that in 1985, he appeared before the Investigating Committee "without benefit of talking to anyone, looking at any documents, looking at any airline tickets, looking at any phone traffic—without benefit of anything." (Dredge, 2A at 98). Dredge's Investigating Committee testimony (Resp. Ex. 2, 3B at 1994; Resp. Ex. 3, 3B at 2149), his June 21, 1989 pretrial examination before a member of this Committee (Resp. Ex. 4, 3B at 2173), and his testimony during this Committee's trial proceedings (Dredge, 2A at 76–172) are reproduced in full in the record for comparison.

(Dredge's) arrest or that he may have gotten to Borders because he (Dredge) was aware that an indictment was coming "or at least they were anticipating or thinking about indicting me. . . ." (Resp. Ex. 2 at 99, 3B at 1994, 2072). Judge Hastings' post-trial statement places the first documented telephone contact between Borders and Dredge on May 5. (Respondent's Comprehensive Statement of the Evidence, 2C at 3199, 3224). Judge Hastings finds additional support for the proposition that Dredge did not meet Borders until late April or early May, in the testimony of an undercover agent, Kendall Shull, who testified that Joseph Nesline, the Washington gambler who had introduced Borders to Dredge, told him in 1985 that he had brought Dredge and Borders together after Dredge's arrest on drug charges. (Shull, 2B at 1820).[11]

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[11] The House filed a motion *in limine* to exclude the testimony of Shull on the grounds that it would be inadmissible hearsay, and that the hearsay statements would be those of Joseph Nesline, who the House claimed was incompetent when those statements were made in 1985. (2B at 1812). Judge Hastings argued that Shull could himself shed light on Nesline's competency in 1985, and that Shull's testimony, although hearsay, should be heard, chiefly because, given Nesline's current condition, it was not possible to hear from Nesline himself. (*Id.* at 1814–16). The Committee overruled the motion, leaving to each Senator the judgment of the weight, if any, to be afforded this testimony. (*Id.* at 1818).

Joseph Nesline had been listed as a witness by Judge Hastings. On June 27, 1989, Nesline's attorney wrote to the Committee, with a supporting letter from Nesline's physician, that Nesline was not competent as a witness due to "severe memory deficits, such that it is virtually impossible to obtain reliable information from him." He further stated that if Nesline were required to appear before the Committee, Nesline "would exercise his constitutional privilege and decline to testify." (2A at 1434–35). Nesline's attorney noted that Nesline had been incarcerated for a substantial period of time after he refused to testify, despite a grant of immunity, when summoned before the grand jury that indicted Judge Hastings and Borders in 1981. (*Id.* at 1435). Judge Hastings and the House stipulated that Nesline had become incompetent for the reasons set forth in the June 27 letter. (*Id.* at 1433).

b. Events from the May 4, 1981 Forfeiture Order through the Postponement of the May 11, 1981 Sentencing

On April 27, 1981, a formal notice was filed in the *Romano* case scheduling sentencing for May 11 at 1:00 p.m. As it had for other periods of time, the House introduced evidence of the fact or the possibility of communication between Judge Hastings and Borders, and the parties probed Dredge's activities.

On May 6, Judge Hastings spoke in West Paterson, New Jersey, at the annual seminar of the New Jersey State Juvenile Aid Officers Association. (Hastings, 2B at 2224; Resp. Ex. 146, 3B at 2923). To get to the seminar, Judge Hastings was scheduled to depart on May 5 from Miami International Airport for Newark, New Jersey, on Eastern Airlines, at 6:55 p.m. (Boone, 2A at 484–89; House Ex. 93, 3A at 423). Borders was also scheduled to depart from Miami International Airport on Eastern Airlines, on a flight leaving at 6:50 p.m., five minutes before Judge Hastings' flight; when Borders' reservation was made, Dredge's phone number was left with the airlines as a "call back number." (Boone, 2A at 475; House Ex. 91, 3A at 421). The record does not establish whether Borders actually took that flight.

Later on May 5, about half an hour before midnight, a call was placed from Dredge's telephone to the home of Madeline Petty. (Petty, 2A at 883; House Ex. 10h, 3A at 177, 178). A few minutes after midnight, a telephone call was made to Petty's home from Madison, New Jersey, and charged to Judge Hastings' home telephone number. (Stip. No. 280, 2A at 508; Petty, 2A at 879–80; Hastings, 2B at 2225). Petty was a social acquaintance of Borders, at whose residence Borders could occasionally be reached. (Petty, 2A at 881). Judge Hastings acknowledged that he was trying to reach Borders whenever he called Petty's home. (Hastings, 2B at 2225). Additional calls, Borders to Dredge (House Ex. 196b, 3B at 1713) and Judge Hastings to Borders (leaving a mes-

sage), were made on May 7. (House Ex. 197, 3B at 1718; House Ex. 215, 3B at 1739; *see* C. Rogers, 2A at 844–46, explaining that 4/7 entry for this message should have been 5/7).

Dredge testified that on Sunday morning, May 10, Borders called Dredge and told him to go to a pay phone to call Borders, which Dredge did. (Dredge, 2A at 85). He further testified that during the conversation which followed, Borders told Dredge that "the Judge can't believe that (the Romanos) can't come up with the money", and that "the [J]udge was going to postpone [the sentencing] on his own with no help from anybody. He was postponing it, and if they didn't perform, come up with the money, that the next time the hammer would fall." (*Id.*). Then, about midday on May 10, Dredge was arrested at his home on a warrant issued in connection with the sealed federal drug indictment. (*Id.*; House Ex. 14, 3A at 199). Dredge testified that he asked his wife to call Borders, and that Borders arranged for Jesse McCrary, a Miami lawyer, to represent Dredge at his bond hearing on May 11. (Dredge, 2A at 85, 157; McCrary, 2A at 1450–51).

The May 11 hearing on the Romanos' motions and sentencing was set for Judge Hastings' Fort Lauderdale courtroom, at 1:00 p.m. In the hallway outside of the courtroom, Neal Sonnett, who had entered an appearance as an additional counsel for the Romanos on February 17, 1981, broke the news to James Deichert, the prosecutor, that he intended to ask Judge Hastings for a continuance at the hearing. Sonnett had not filed a written motion in advance of the hearing. At the hearing, after Judge Hastings asked the Romanos to step forward for sentencing, Sonnett requested an adjournment to supplement the new trial motion which the Romanos' trial counsel had filed on December 30, 1980. Judge Hastings granted the postponement over Deichert's opposition. Deichert argued that it was five months since the verdict and that Sonnett, the Ro-

manos' additional counsel, had already been in the case for several months. (House Ex. 4, 3A at 18, 30).

The parties examined Jeffrey Miller, Judge Hastings' law clerk, and Sonnett on whether Sonnett, who had not filed a written motion for continuance, had advised Judge Hastings' chambers in advance of the May 11 hearing that a motion for a continuance would be made. These questions were prompted by the fact that Dredge testified that Borders had told him that the "the [J]udge was going to postpone [the sentencing] on his own with no help from anybody" (Dredge, 2A at 85), and the postponement actually occurred when Judge Hastings granted the motion of the Romanos' lawyer, Neal Sonnett.

Both Sonnett and Miller were unequivocal that Sonnett had not advised Judge Hastings' chambers on or before May 8, the Friday preceding the scheduled Monday hearing and sentencing. However, Miller acknowledged that he testified at Judge Hastings' criminal trial in 1983 that "I believe that Neal Sonnett had contacted Judge Hastings' chambers and requested that the sentencing be continued because he was going to file some post-trial motions. . . ." (Miller, 2A at 614–15). Before this Committee, however, Miller testified that he was "certain" that Sonnett had not contacted Judge Hastings' chambers on the Friday that preceded the Monday, May 11 hearing, and that "I do not recall Neal Sonnett contacting our offices on Monday morning." (*Id.* at 615). On whether he might have notified Judge Hastings' chambers on the morning of May 11 of his intention to seek a continuance, Sonnett testified "that if I notified chambers, it probably would have been on Monday morning rather than any time prior to that. But I just do not recall whether I did." (Sonnett, 2A at 216).

Early on May 11, at 6:27 a.m., a call had been placed from Judge Hastings' home phone to Borders' home phone, and a minute later a call was placed from Judge

Hastings' home phone to the home of Borders' acquaintance, Madeline Petty; the second call, just as the first call, lasted no more than a minute. (Hastings, 2B at 2346; House Ex. 31h, 3A at 282). Dredge testified that on the day following the postponement, May 12, Borders called and told him, "You know, in fact, my man performed. The case was postponed." (Dredge, 2A at 85). According to Dredge, it was at that point that he became convinced that Borders and Judge Hastings were working in concert. (*Id.* at 84–85).

c. Events from the May 11, 1981 Postponement to the July 8, 1981 Sentencing

In the weeks following the May 11 postponement, several events occurred that are significant to Judge Hastings' explanation of his communications with Borders. First, on May 16, President Reagan terminated Borders' membership on the District of Columbia Judicial Nomination Commission. Borders had served just less than one year of the five-year term to which he had been appointed by President Carter. On June 8, Borders filed a lawsuit in the United States District Court for the District of Columbia challenging the President's authority to remove him from the Commission.

Borders' case progressed rapidly. The district court heard argument on June 18, and on July 7, held that Borders' removal was invalid. Judge Hastings testified that "I know that [Borders] discussed it with me, both before the filing of the lawsuit, when the lawsuit was filed, and I have a distinct memory when he won, I don't recall ever seeing the man as happy about any one thing as when, in his words, he beat the President of the United States." (Hastings, 2B at 2227).

On May 26, a significant event had occurred for Hemphill Pride; the South Carolina Supreme Court voted three to two to reject disbarment as too severe a sanction for Pride's 1977 conviction, and instead imposed an indefinite suspension. (Resp. Ex. 110a, 3B at 2843). Under South Carolina's Rule on Disciplinary Pro-

cedures, the indefinite suspension permitted Pride to petition for reinstatement after two years. Judge Hastings testified that Pride "was ecstatic about the fact that he received an indefinite suspension and communicated that to me, and Bill Borders and I talked about it regularly . . . ." (Hastings, 2B at 2228).

On June 1, Judge Hastings issued an order in the *Romano* case that established a schedule for additional briefing and set argument and sentencing for July 8. In 1981, Judge Hastings' court, the Southern District of Florida, was part of the Fifth Circuit.[12] On June 19, 1981, a three-judge panel of the United States Court of Appeals for the Fifth Circuit entered a ruling in *United States* v. *Martino* which sharply limited the financial interests that are forfeitable under RICO, the Racketeer Influenced and Corrupt Organizations Act, in cases in the Fifth Circuit. The prosecution and the defense briefed the effect of the *Martino* case on Judge Hastings' May 4 forfeiture order in memoranda filed in Judge Hastings' court on June 29 and July 6, respectively. (Deichert, 2A at 36; Miller, 2A at 626; House Ex. 2, 3A at 3, 14). Jeffrey Miller, Judge Hastings' law clerk, also prepared memoranda for Judge Hastings on the motions that would be heard at the July 8 hearing. (House Ex. 119, 3A at 449).

On June 3, 1981, an event had occurred that would become intertwined in the Government's investigation of Judge Hastings and Borders. A grand jury in the Southern District of Florida returned an indictment against Santo Trafficante, a major organized crime figure in Florida. The case was assigned to Judge Hastings. (M. Rogers, 2A at 236–37; House Ex. 216, 3B at 1768).

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[12] The district courts in Florida later became a part of the new Eleventh Circuit, whose Judicial Council conducted the proceedings against Judge Hastings under the Judicial Conduct and Disability Act.

On July 5, a call was placed at 6:36 p.m. from Borders' home phone to Dredge's home phone. (House Ex. 196c, 3B at 1714). Two hours later, at 8:35 p.m., a call that lasted less than a minute was placed from Judge Hastings' home to Borders' home. (Stip. No. 284, 2A at 508). On July 7, the day the district court in Washington handed down its ruling in Borders' lawsuit against President Reagan, Judge Hastings called Borders at 11:56 a.m.; the call lasted less than a minute. (Stip. No. 285, 2A at 508). Also on July 7, Dredge flew to Washington. (Boone, 2A at 501; House Exs. 17–19, 3A at 225–27; House Exs. 111–14, 3A at 441–44). Dredge testified that he saw Trafficante at Nesline's Washington apartment. According to Dredge, Trafficante was trying to reach Borders. Dredge gave him a phone number for Borders, and Trafficante arranged to meet Borders. (Dredge, 2A at 87–88).

The July 8 hearing and sentencing in the *Romano* case took place as scheduled. Judge Hastings first heard argument on the Romanos' motion for a new trial, which he denied. (House Ex. 6, 3A at 41, 66). Next, Judge Hastings heard argument on the Romanos' motion for reconsideration of the May 4 forfeiture order, during which both Deichert, for the prosecution, and Sonnett, for the defense, addressed the significance of the *Martino* decision. Although the parties had filed memoranda discussing that decision, Judge Hastings testifed that he first heard about *Martino* as he was going into the courtroom on July 8 with his law clerk "tugging" on him to tell him about the case. (Hastings, 2B at 2279). After counsel finished their arguments, Judge Hastings upheld the $1,162,116 forfeiture that he had imposed on May 4, saying "I will allow the forfeitures as previously set out by the Court to be maintained, and . . . a brief order will be prepared that will recite the reasoning of the Court." (House Ex. 6, 3A at 41, 105). Sonnett, the Romanos' lawyer, afterwards told the Romanos that it appeared that Judge Hastings had

not read the *Martino* decision and that when he had, he would likely reverse his ruling or, otherwise, would be reversed on appeal. (Sonnett, 2A at 205).

Judge Hastings next turned to the sentencing. A probation officer's presentence report recommended that both Tom and Frank Romano be sentenced to three-year prison terms. (Resp. Ex. 1, 3B at 1971, 1993 and Resp. Ex. 118, 3B at 2869, 2893). Deichert, the prosecutor, argued for a "custodial sentence" for each of the Romanos without recommending any particular length of prison sentence. (Deichert, 2A at 56–57; House Ex. 6, 3A at 41, 119). Sonnett, the Romanos' lawyer, argued against incarceration and for probation. He pointed to Tom Romano's poor health, to Frank Romano's World War II record, and to the lack of any criminal record for either of the Romanos. (House Ex. 6, 3A at 41, 108–14). Judge Hastings rejected the plea for probation, and sentenced each of the Romanos to three years in prison. (*Id.,* 3A at 129–35). He recommended that the Romanos be placed in a minimum security prison, specifying either Eglin Air Force Base or a medical facility. His formal judgments provided that the Romanos "shall become eligible for parole at such time as the Board of Parole may determine." (House Ex. 7, 3A at 146–47). A separate report by Judge Hastings stated that he had "[n]o objection to early release on parole." (Resp. Ex. 118, 3B at 2868).

On July 8, Judge Hastings also had a conference with counsel in the *Trafficante* prosecution. (M. Rogers, 2A at 238).

d. Events from the July 8, 1981 Sentencing Until the Formation of the Undercover Operation

The *Romano* case saw little activity between the July 8 sentencing and the commencement of the undercover operation on September 10, 1981. On July 14, the Romanos filed a notice of appeal from the written judgment of conviction and order of commitment that Judge Hastings had entered on July 8 when he sentenced the

Romanos. (*See* House Ex. 2, 3A at 3, 14). They also filed a notice of appeal that day from Judge Hastings' oral ruling that the May forfeiture order would be "maintained," even though the Judge had not entered a written order to that effect. Sometime in July, Jeffrey Miller, Judge Hastings' law clerk, prepared a rough draft of an order pertaining to the forfeiture. (Miller, 2A at 621; House Ex. 120, 3A at 461). With respect to whether he had had status conferences with Judge Hastings from July 8 to the end of August, about preparation of an order, Miller testified:

> I am sure that from time to time the Judge would have wanted to know what the status was, of not only that case. I do not recall the Judge coming back and saying, Well, tell me about the *Romano* case. It might have been: Give me an update of what you got, what is pending, things you are working. And I would have in the course of those conversations just brought him up to date.

(Miller, 2A at 631–32).

On August 27, 1981, the Fifth Circuit issued an opinion in *United States* v. *Peacock* that adhered to its *Martino* decision. (Stip. No. 111, 2A at 620). Miller testified that he brought the *Peacock* decision to Judge Hastings' attention, probably in early September, and that Judge Hastings told him not to agonize about the matter, which Miller understood to be a direction that "if you have to give [the money] back, give it back." (Miller, 2A at 632). No order was prepared, however, until October 5, 1981, in the midst of circumstances that will be described in section E of this report.

Judge Hastings and Borders saw one another a number of times during the month of July. On July 9, the day after the July 8 hearing and sentencing, a telephone message was left at Borders' Washington office concerning Judge Hastings' plan to return from Key West to Miami on July 11. (Stip. No. 286, 2A at 508). On

July 11, Judge Hastings and Borders met in Miami and spent the afternoon at Jesse McCrary's home. On either July 18 or 19, Judge Hastings and Borders saw each other in Washington, while Judge Hastings was attending an American Bar Association committee meeting. (Hastings, 2B at 2232–33; Resp. Ex. 147, 3B at 2933.) They also saw each other between July 26 and July 30, 1981, while attending the annual convention of the National Bar Association in Detroit. (Hastings, 2B at 2234.) With the exception of one phone call from Borders' office to Judge Hastings' chambers on September 1, the evidence does not document any contact between Judge Hastings and Borders, by telephone or in person, during the month of August or the first week in September. (House Ex. 276, 3A at 264).

For William Dredge, July was the month when he approached the Government, hoping that in return for information, he could obtain a favorable disposition of his drug charges. Judge Hastings contends that by that time, Dredge and his friend Nesline believed that Judge Hastings was an innocent victim of Borders' scam but that Dredge knew he would have to implicate the Judge in order to make a good deal. To support that contention, Judge Hastings introduced the testimony of Kenneth Robinson, a criminal defense trial lawyer, who stated that probably after Judge Hastings' trial in 1983, Nesline had told him that "Borders was puffing and trying to make a buck, and that Judge Hastings wasn't involved," and the testimony of Kendall Shull, an FBI undercover agent, that in 1985, Nesline told him that "he did not believe that Mr. Borders had any control or influence over Judge Hastings." (Robinson, 2B at 1837; Shull, 2B at 1822). Dredge denied that when he approached the Government, he believed that Borders lacked power over Judge Hastings. (Dredge, 2A at 141–42, 145).

There is evidence that Dredge had been giving considerable thought as to how he might dispose of his drug

charges. In May of 1981, Nesline had brought Dredge to Kenneth Robinson. (Robinson, 2B at 1834). Robinson testified that Dredge told him about the drug charges against him: "He wanted me to either make a guarantee that I could fix the case by hook or crook, any way possible, either pay off the judge, the D.A., the cops, fix something at the clerk's office" and offered Robinson $50,000, then $100,000, if Robinson could make that guarantee. (Robinson, 2B at 1835). Robinson refused to become involved. (*Id.*). Over the July 4th weekend, Dredge reportedly asked Jimmy Harmon, then an agent with the Bureau of Alcohol, Tobacco and Firearms, "[w]hat's it worth to turn up a Federal judge." (Harmon, 2B at 1875).

On July 20, Dredge arrived at the United States Attorney's Office in Miami. He told persons there that he had information pertaining to the case involving Santo Trafficante; he was directed to Martha Rogers, an attorney with the Organized Crime Strike Force, who had been assigned to the criminal prosecution of Trafficante and his co-defendants. (Dredge, 2A at 93; M. Rogers, 2A at 239).

Over the course of that day, Dredge told Rogers, and others who were periodically present, that he had information that a "very prominent lawyer" from Washington was coming to Miami the next day, July 21, to meet with Trafficante. Dredge also reported that that lawyer was involved in soliciting a bribe on behalf of Judge Hastings from Trafficante in connection with his pending criminal case, and that he had been asked by that lawyer to approach the Romano brothers and ask them for $150,000 in return for a sentence of probation from Judge Hastings. (M. Rogers, 2A at 239–41; Dredge, 2A at 93). Rogers determined, from checking passenger lists, that the prominent attorney could be William Borders. (M. Rogers, 2A at 239–40).

On July 21, Dredge returned to the Strike Force Office. (Murphy, 2A at 244). The Strike Force attorneys

told the FBI that they had been supplied information about possible bribery schemes in Judge Hastings' court. (*Id.*). Rogers and an FBI agent were able to corroborate Dredge's information concerning a meeting between Trafficante and Borders that day. They saw Borders deplane at the airport, and after a stop at Dredge's apartment, eventually meet Trafficante in a small restaurant area of the Fontainebleau Hotel for 15 to 20 minutes, then drive with Trafficante to the airport. One of the agents overheard Trafficante say "good job" to Borders as they shook hands and departed. (Murphy, 2A at 247; M. Rogers, 2A at 241). No other conversation was overheard.

On July 23, Dredge met with FBI agents and told them that Borders had asked him to find out about the Romanos to see if they were interested in a bribery scheme. (Murphy, 2A at 247). Special Agent William Murphy was assigned as the case agent to investigate the bribery allegations. (*Id.* at 244). Dredge told the FBI that he had been indicted in U.S. District Court in Baltimore and that he wanted a deal in exchange for the information which he was supplying. (*Id.* at 245). No deal was made in July. (*Id.*).

Dredge continued to supply information to the FBI during July and August. On August 16, a call was placed from Border's office to Dredge's home. (House Ex. 27a, 3A at 255, 256). Early in the week of August 21, Dredge told Murphy that Borders would be coming to Miami on August 21 to meet with either Trafficante or Judge Hastings regarding the Trafficante bribery scheme. (Murphy, 2A at 247). Through FBI surveillance, an August 21 meeting between Borders and Trafficante was confirmed. Borders and Trafficante met on the steps of the Fontainebleau Hotel, then immediately drove to the airport, where they parted after talking for five to ten minutes. (*Id.* at 248). Again, the subject of their conversation is not known. On August 23, August 31, and again on September 9, calls were placed be-

tween Borders' and Dredge's phones. (House Ex. 11d, 3A at 190; House Ex. 196d, 3B at 1715).

After considerable discussion between Dredge and the Government (Murphy, 2A at 370–73; Resp. Ex. 13, 3B at 2377; Resp. Ex. 14, 3B at 2381; Resp. Ex. 15, 3B at 2389; Resp. Ex. 17, 3B at 2392; Resp. Ex. 19, 3B at 2401), a plea agreement between Dredge and the United States Attorney in Maryland was completed and signed on September 11 and 12. (Murphy, 2A at 245). The FBI and the Public Integrity Section of the Justice Department had developed a plan to pursue the allegations that Dredge had made. (*Id.* at 250). Based on Dredge's representation that Borders did not know what Tom and Frank Romano looked like, the Government decided to introduce an undercover agent, posing as a Romano brother, to Borders. (*Id.*). As part of his plea agreement, Dredge would introduce Borders to the undercover agent and supply any additional information which Dredge learned. (*Id.* at 252; Dredge, 2A at 143). In return, the Government would accept Dredge's guilty plea to the conspiracy to distribute quaaludes. Although it would make no recommendation as to sentencing, the Government agreed to report Dredge's cooperation with the FBI to the court. (Dredge, 2A at 143). The Government agreed not to call Dredge as a witness before a grand jury or at trial in connection with these bribery matters, and agreed that Dredge would not be wired, recorded, or photographed. (*Id.* at 142; House Ex. 23, 3A at 231–32).

3. The House Perspective

Impeachment Article I alleges that the conspiracy between Judge Hastings and Borders began "some time in the first half of 1981." Through its evidence for this initial period, the House sought to establish that there was a pattern of contacts between Judge Hastings and Borders around key events in the *Romano* case. They were in contact on the morning of February 20, the final day for taking evidence in the *Romano* forfeiture proceed-

ings. On April 9, the day after the parties completed their initial briefing of the forfeiture issue, Judge Hastings placed a call to Washington, from a pay phone outside his chambers. In late April, after the May 11 date for sentencing was scheduled, the two were again in contact. On May 4, the day that Judge Hastings entered an order imposing a $1,162,116 forfeiture on the Romanos, Judge Hastings left a message for Borders that was marked "urgent." Judge Hastings also sought to reach Borders in the days before and on the day of the scheduled May 11 sentencing, and phone calls were placed in the days preceding and following the July 8 sentencing.

The House then utilizes Dredge's testimony, and exhibits which it submitted to corroborate that testimony, to build a case that Borders was actively soliciting a bribe from the Romanos within several weeks of the February 20 forfeiture hearing. According to the House, in March, 1981, Borders was sufficiently involved in the bribery scheme to have enlisted Dredge to communicate to the Romanos that a Washington lawyer could help with their case, and by April and May, to be in contact with both Dredge and Judge Hastings on the subject.

On the morning of May 10, the day before the scheduled May 11 sentencing of the Romanos, Borders had told Dredge by telephone that the Judge "was going to postpone [the Romanos' sentencing] on his own with no help from anybody." (Dredge, 2A at 85). The postponement came about differently, in response to an oral motion at the sentencing hearing by the Romanos' counsel. The House suggests, however, that Judge Hastings had learned, probably from Sonnett, the Romanos' lawyer, that Sonnett was going to ask for a continuance and for that reason did not grant the continuance himself as Borders reported the Judge would do. In any event, the House attributes Judge Hastings' willingness to grant the motion to delay sentencing, even though more than four months had passed since the jury ver-

dict, to his desire to give the Romanos more time to see the benefits of responding to Borders' bribe overture.

Dredge testified that Borders had also told him on May 10: "if [the Romanos] didn't perform, come up with the money [after Judge Hastings postponed the May 11 sentencing], that the next time the hammer would fall." (Dredge, 2A at 85). That is how the House, in fact, would characterize the sentence that Judge Hastings imposed on the Romanos on July 8 and his denial of the Romanos' motion to reconsider his forfeiture order. The Romanos were in their sixties. They had no other criminal convictions. Tom Romano, the older of the brothers at age 65, had a history of heart attacks. Indeed, Tom Romano had a number of coronary incidents during the trial. Judge Hastings recessed the trial for five days and had arrangements made to videotape Tom Romano's testimony at a hospital. (Deichert, 2A at 33). Deichert, the prosecutor, characterized Tom Romano's sentence as "probably a life sentence." (*Id.* at 57). Also on July 8, Judge Hastings' refused to reduce his May 4 forfeiture order as required by the Fifth Circuit's June 19 *Martino* decision. From the perspective of the House, Judge Hastings undoubtedly knew that he would have to reverse himself in the promised written order, but he waited to issue that order in the months that followed to give the Romanos yet more time to reflect on the benefits of yielding to Borders' entreaties.

4. Judge Hastings' Perspective

Judge Hastings attributes his communications with Borders during the first half of 1981 to particular National Bar Association events which he has identified, to Borders' challenge to President Reagan's removal of Borders from the District of Columbia Judicial Nomination Commission, and to discussions about Hemphill Pride's situation following his release from prison in March, 1981. More specifically, Judge Hastings and Borders were together for a midwinter meeting of the National Bar Association and its Judicial Council in late

February in Miami Beach. In late April, Judge Hastings was actively soliciting support from National Bar Association officials for proposed programs at its annual summer meeting. Between May 16 through July 7 and the days immediately after, Borders' successful litigation on his removal from the Judicial Nomination Commission was the subject of conversation between Judge Hastings and Borders. Judge Hastings and Borders were also together at the National Bar Association convention in Detroit in late July. Judge Hastings further testified that "Bill Borders and I talked about [the decision of the South Carolina Supreme Court in late May, 1981 to suspend Pride indefinitely] regularly. . . ." (Hastings, 2B at 2228).

Judge Hastings denies that there is cause for suspicion in the postponement of the May 11 sentencing. The May 11 transcript shows that he was ready to sentence the Romanos that day and that the postponement resulted from the motion of the Romanos' counsel rather than from any action by Judge Hastings on his own initiative. Concerning the July 8 hearing and sentencing, both Judge Hastings' adherence to the forfeiture and the prison sentences he imposed were consistent with the argument and recommendation of Deichert, the prosecutor. With respect to the forfeiture, Deichert had argued that the *Martino* case was wrong or distinguishable,[13] and that in any event he (Judge Hastings) had not read the decision. Further, the three-year sentences

[13] In fact, the prosecutor's objections to the *Martino* decision, and the unease that Judge Hastings may have felt about the merits of the decision, were borne out when the full Fifth Circuit, on rehearing, ruled in favor of the Government's view as to the kinds of financial interests that may be forfeited under RICO. *United States v. Martino,* 681 F.2d 952 (5th Cir. 1982) (en banc). Upholding the Government's position, the Supreme Court affirmed. *Russello v. United States,* 464 U.S. 16 (1983). Neither party, however, contends that even a well-based disagreement by a United States district judge with an appellate ruling of his or her court of appeals is a ground for disregarding it.

were in accord with both the prosecutor's recommendation that prison sentences be imposed and with the probation officer's specific recommendations that imprisonment be for three-year terms. (Stip. No. 26, 2A at 32).

As for Dredge's testimony that Borders had asked him in March about the Romanos and used him in April to contact them, Judge Hastings urges that it is Dredge's initial 1985 testimony before the Judicial Council's Investigating Committee that should be credited instead. In that testimony, Dredge asserted that he first became acquainted with Borders *after* Dredge's indictment in Maryland, which occurred on April 29, 1981. Judge Hastings claims that Dredge, in order to explain the absence of documented contacts between himself and Borders prior to May 5, lied when he testified for the first time, before our Committee, that he and Borders developed a clandestine system of using pay phones to discuss the *Romano* case. (Dredge, 2A at 121). He notes that in May the phone records show a series of contacts between Dredge and Borders and argues that it is implausible that the clandestine pay phone system would have been abandoned, with Dredge and Borders comfortably calling one another at their own phones, after Dredge claims to have become convinced that Borders in fact "had something with the Judge." (*Id.* at 85, 125–26). Judge Hastings contends that the May 11 continuance occurred before Dredge had attempted to interest the Romanos in Borders' scheme.

Dredge is more likely, in Judge Hastings' view, to have heard Borders' promise of a continuance in connection with the July 8 sentencing, when there was no postponement. Judge Hastings' theory is that, when Dredge realized that Borders could not fix a continuance in Judge Hastings' court, Dredge decided that Borders was unreliable and that in order to resolve his own criminal problems in Maryland, he would have to offer up not only Borders, but an innocent Judge Hastings as well.

D. THE EVENTS OF SEPTEMBER 10–19, 1981: THE UNDERCOVER OPERATION IS LAUNCHED

1. Overview

Having reached agreement with William Dredge that his Baltimore drug charges would be dealt with in a plea bargain, the Government immediately put him to work in launching the undercover operation. On September 10, 1981, Dredge called William Borders and told Borders that the Romanos were finally ready to join in the bribery scheme. On September 12, Dredge introduced Borders to H. Paul Rico, the former FBI agent who had been recruited by the FBI to pose as Frank Romano.

Borders met Rico at the Miami International Airport on September 12 to hammer out the details of their plan. Ultimately, the Romanos were to pay $150,000 in return for a reduction of their prison sentences to terms of probation. The plan, however, had a number of interim stages, in Borders' words, "checks and balances" which would show that Borders was working in concert with Judge Hastings so that the promised relief from their prison sentences could be delivered. The first show of proof would be Judge Hastings' appearance at the Fontainebleau, a Miami Beach hotel, at 8:00 p.m., on September 16. Rico would, on September 19, then make a down payment on the bribe.

By September 19, those initial steps appeared to have been taken. Judge Hastings had arrived at the Fontainebleau at the appointed time, and on September 19, Rico gave Borders a $25,000 down payment, and the two reconfirmed the remaining stages of their deal.

Judge Hastings and Borders were in considerable contact during the brief period covered by this section. They spoke with one another on the afternoon of September 10. They were both at Washington National Airport on the evening of the 11th with an opportunity to meet together, although Judge Hastings testified that he did not know that Borders was there and did not see

him. They socialized together the night of the 12th at the Sheraton Hotel in Washington. Borders drove Judge Hastings and another friend to the airport on the 13th, and the two spoke again on the 14th.

The evidence raises at least two questions. First, were Borders and Judge Hastings in steady contact, as the House contends, because Dredge had, on September 10, finally signalled the Romanos' willingness to join in the bribery scheme, and Borders and Hastings now needed to discuss that scheme, both at the airport the night before and at the Sheraton the night of the Borders and Rico meeting on September 12? Or, as Judge Hastings contends, was the proximity of the two men at the airport on the evening of the 11th not known to the Judge, the arrival of Borders at the Sheraton on the evening of the 12th a surprise to the Judge and all communication between the two purely social? Second, does Judge Hastings' appearance at the Fontainebleau on September 16 provide significant proof, as the House contends, that Judge Hastings was acting in concert with Borders? Or, as Judge Hastings urges, did Borders invite Judge Hastings to join him for dinner at the Fontainebleau and thus manipulate an unwary Judge Hastings into making the first show of proof?

The Statement of Evidence which follows discusses the events of September 10–19 in three subsections. The first runs from September 10–14; the second centers on the Fontainebleau dinner of September 16; and the third concerns Rico's payment of the down payment on September 19.

It should be noted that the evidence relating to the events of September 10–19 is pertinent not only to Article I, but to Articles V and VI as well. Article V charges that Judge Hastings gave false testimony at trial when he denied that he appeared at the Fontainebleau to demonstrate his participation in the bribery scheme. Article VI charges that Judge Hastings likewise lied

when he testified at trial that he did not expect Borders to appear at his room at the Sheraton on September 12.

2. Statement of Evidence

a. The Events of September 10–14, 1981

Judge Hastings had intended to depart on Thursday, September 10, 1981, for a weekend trip to Washington to socialize with his friend Jesse McCrary, followed by a speaking engagement in Harrisburg, Pennsylvania. A jury trial, however, kept him from leaving that day. (Hastings, 2B at 2238–40; McCrary, 2A at 1453; Resp. Ex. 94, 3B at 2656, 2653). According to Judge Hastings, he had told Borders in an earlier conversation that he would be in Washington, staying at the Sheraton over that weekend, and Borders was going to pick him up at the airport. (Hastings, 2B at 2238, 2368). The morning of the 10th, Judge Hastings left a message with William Borders' secretary that he would not be coming to Washington that day and asked that Borders call back between 4:30 and 5:00 p.m. (Stip. No. 35, 2A at 254).

As Judge Hastings knew, William Borders likewise had plans that weekend, namely, to attend a family reunion in Florida. (Thomas, 2A at 427; Hastings, 2B at 2239). As of about noon on September 10, Borders had reservations from Washington to Miami on Friday, September 11, at 7:30 p.m., then flying from Miami to West Palm Beach on the morning of September 12, and then back to Washington on Sunday, September 13. (Stip. No. 34, 2A at 354).

On September 10, at 1:29 p.m., William Dredge called Borders and told him that "the brothers was ready to meet him, to make a deal, to iron it out. . . ." During that call, Borders said that he wanted to meet with only one of the brothers and set the meeting for September 12, at 8:00 a.m., at the Miami International Airport. FBI Agent William Murphy was with Dredge when he made the call. (Murphy, 2A at 252; Dredge, 2A at 95; House Ex. lld, 3A at 190).

At 4:40 p.m., that afternoon, there was a call of a minute or less from Borders' law office to Judge Hastings' chambers (Stip. No. 36, 2A at 254), and late that afternoon, Borders' secretary entered a 5:10 p.m. call from Judge Hastings to Borders with a message that the Judge would be waiting for the call and to get him off the bench. (Stip. No. 37, 2A at 254). At 5:34 p.m., Borders called the Judge's chambers. (Stip. No. 38, 2A at 254; Hastings, 2B at 2367).

On the morning of September 11, Judge Hastings' secretary changed his departure for his weekend in Washington from a 6:50 p.m. flight to a 3:48 p.m. flight. (Hastings, 2B at 2367; House. Ex. 29, 3A at 269). Judge Hastings' jury trial ended that afternoon in time to make his 3:48 flight, but the flight was substantially delayed. He arrived two hours late at Washington National Airport—at 8:04 p.m. rather than 6:00 p.m. (Stip. Nos. 39 and 40, 2A at 257; Hastings, 2B at 2240, 2241). While waiting to depart from the Miami airport, Judge Hastings twice made calls to Borders' office to advise him of the delay. (Stip. No. 41, 2A at 257; Hastings, 2B at 2240). A 4:20 p.m. message slip read: "Flight further delayed; not leaving until 5." (Stip. No. 42, 2A at 257; House Ex. 32, 3A at 289, 301). Judge Hastings testified that he also called a woman named Shirley Ross at least two times, because he had made plans to have dinner with her in Washington that evening and wanted to tell her he would be late. (Hastings, 2B at 2240; Ross, 2B at 2121).

That same evening Borders did not take his scheduled 7:30 p.m. flight from Washington National Airport to Miami, but instead left on a 9:20 p.m. flight. He was seen by the FBI when he arrived in Miami, in the early morning hours of September 12. (Stip. Nos. 43, 44, 45, 2A at 257; Murphy, 2A at 258; House Exs. 33, 34 and 35, 3A at 303–05).

The overlap between Judge Hastings' arrival at Washington National at 8:00 p.m. and Borders' departure

from that airport on a 9:20 p.m. flight provided an opportunity when the two men could have met. Judge Hastings did not check into the Sheraton, which is approximately a 15-minute drive from the airport, until 10:14 that night. (Stip. No. 46, 2A at 257; Murphy, 2A at 257–58; House Ex. 37, 3A at 306). Judge Hastings denied that he and Borders met at the airport. (Hastings, 2B at 2242). He explained the delay between his arrival at the airport and his arrival at the Sheraton by a long wait for his luggage, a cab ride to pick up Shirley Ross, during which the driver got lost, and an additional wait for Ross before they arrived at the Sheraton for dinner. (*Id.* at 2241). Ross testified that at around 9:00 p.m., Judge Hastings picked her up in a taxi for dinner in front of her apartment. (Ross, 2B at 2122–23). The FBI had attempted to keep both Judge Hastings, in Miami, and Borders, in Washington, under surveillance on September 11. Apparently, however, the agents were not in a position to see whether Judge Hastings and Borders had in fact met at Washington National Airport. (Murphy, 2A at 254–55, 380).

September 12 was the date scheduled for the meeting between Borders and H. Paul Rico, the retired FBI agent whom the FBI had chosen to play the role of Frank Romano. (Murphy, 2A at 254; Rico, 2A at 409–10). Prior to that meeting, Rico was introduced to Dredge and briefed by FBI agents concerning the deal which, according to Dredge, Borders was willing to make. (Murphy, 2A at 258; Rico, 2A at 411–12). The FBI expected that Borders and Rico would arrange for a single show of proof that the Judge was involved by having him appear at a designated time and place. However, as a result of Borders' suggestion, Rico and Borders agreed to an additional show of proof—a return of the Romanos' forfeited property. (Murphy, 2A at 403–04).

At approximately 8:05 a.m. on September 12, Dredge introduced Rico to Borders at the Miami International Airport. Rico was wearing a body recorder, and a tape

recording, House Exhibit 38a, was made of the meeting. (Murphy, 2A at 258; Rico, 2A at 409–10, 415). A transcript of that recording, House Exhibit 38b, is reprinted at pages 260–70 of Part 2A of the record, the point in the proceedings where the tape was played for the Committee.

Dredge then left Borders and Rico alone. (Dredge, 2A at 95; Murphy, 2A at 271; House Ex. 38b, 2A at 260, 260–61). Rico testified that he had no further contact with Dredge. (Rico, 2A at 418). Dredge testified that after making the introduction, his involvement was limited to receiving two phone calls from Borders, one probably that evening when Borders told him that "he [Borders] would take care of everything from this point forward" (Dredge, 2A at 95), and one several weeks later when Borders said he "had bad vibes" about Rico. (*Id.*). Judge Hastings disputes the contention that Dredge had no further involvement with Borders and the undercover operation. (*Id.* at 143–45).

After Dredge left, Borders and Rico proceeded to work out the details of the *Romano* bribery scheme. What evolved was a system of "checks and balances" that would assure the Romanos that Judge Hastings was an actual participant in the plan before they had paid the entire bribe and dismissed their appeals in expectation that the Judge would reduce their prison terms. (House Ex. 38b, 2A at 260, 263). They agreed that for $150,000, an amount not spoken during the conversation, but written by Borders on a piece of paper and shown to Rico, the Romano brothers' three-year jail sentences would be reduced. (Rico, 2A at 410; House Ex. 38b, 2A at 262).

Rico suggested that Borders have Judge Hastings appear at an appointed time and place as a means of proving that he was part of the bribery scheme. (Murphy, 2A at 272–73; Rico, 2A at 411, 423; House Ex. 38b, 2A at 266). Borders said he did not have to check first to see when the Judge would be available. He

chose "Wednesday of next week for dinner" (September 16), and told Rico to "name a place now." After Rico named one restaurant, Borders asked if it was "a clean joint" and encouraged Rico to "[n]ame one of the better places in town you know," asking, "what's one of the better, ah, hotels with a restaurant in it." (House Ex. 38b, 2A at 267). Rico settled upon the main dining room of the Fontainebleau at 8:00 p.m. (*Id.*).

Rico and Borders agreed that they would meet again on September 19 at the Miami International Airport, at which time Rico would "[p]ut something up front" on the deal. (*Id.*, 2A at 268–69). Borders said that ten days later a "substantial . . . amount" of the property that the Romanos had forfeited would be returned (*id.*, 2A at 262), and "that will be a signal showing you that I'm, I know what I'm talkin about, right?" (*Id.*, 2A at 264; Rico, 2A at 413; Murphy, 2A at 403–04). Borders promised that the sentences would thereafter be reduced once they had "file[d] a motion for mitigation" and withdrawn their appeals. (House Ex. 38b, 2A at 263). Borders initially suggested that Rico give the down payment to Dredge, and that Dredge would hold the money until the Judge issued the order. Rico, however, objected, and they agreed that the money would go directly to Borders. (*Id.*, 2A at 263–66). It was not clearly stated when the balance of the $150,000 would be paid. (*Id.*).

Borders and Rico then parted, and, later that morning, Borders flew to West Palm Beach and was driven by his cousin to his family reunion in Fort Pierce, Florida. (Stip. No. 60, 2A at 272; Stip. No. 62, 2A at 428; Thomas, 2A at 428). However, by early that afternoon, he was already on the phone arranging to return that day to Washington. Throughout the day, he made a complex series of changes in his travel plans, eventually flying into the Washington area at about 9:00 p.m. (Stip. Nos. 71, 72, 2A at 509; Boone, 2A at 494–98; Lowe, 2A at 452–53; House Exs. 72, 73, 3A at 399, 400).

Judge Hastings had spent the day of September 12 in Washington, at the Sheraton, socializing with his friend Jesse McCrary, who was likewise registered there. (Hastings, 2B at 2242–43; McCrary, 2A at 1453). McCrary and Hastings had known one another since law school and had worked together in a law firm. (McCrary, 2A at 1448–49). Over the years, McCrary's public positions included Assistant Attorney General for the State of Florida, a judge on a Florida Court of Administrative Appeals, Secretary of State for the State of Florida, and service on numerous statewide boards and commissions. (*Id.* at 1449; Resp. Ex. 132, 3B at 2901).

Judge Hastings and McCrary watched a tennis match, made some telephone calls, and as Judge Hastings testified, a "lot of liquor was put away, suffice it to say." (Hastings, 2B at 2242–44). They visited at the Sheraton for a time with McCrary's daughter. (*Id.* at 2242; McCrary, 2A at 1454). Recollections as to the exact time differed, but at some point between 7:00 and 9:00 that evening, a group of five had assembled in Judge Hastings' room. (Hastings, 2B at 2242–43; McCrary, 2A at 1455; Mendez Myrill, 2A at 511; P. Dabreau Mapp, 2B at 1723).

That group consisted of Judge Hastings; Jesse McCrary; McCrary's guest, Donna Mendez, who is now an attorney with the Queens, New York, District Attorney's Office and was then a Howard University law student who had worked at McCrary's law firm; Pearl Dabreau, who had met Judge Hastings some seven months earlier on an airline flight and had been invited to dinner that evening by Judge Hastings; and Margaret Dabreau, who with Judge Hastings' assent, was invited by her sister, Pearl Dabreau, to join them. (Hastings, 2B at 2244; McCrary, 2A at 1455; Mendez Myrill, 2A at 511; P. Dabreau Mapp, 2B at 1723–24, 1729; M. Dabreau Owens, 2A at 1403).

At approximately 10:00 p.m., William Borders arrived at Judge Hastings' room at the Sheraton, where the

group was still socializing. (Hastings, 2B at 2370–71; McCrary, 2A at 1455). Judge Hastings testified that he did not expect to see William Borders that evening: "I didn't know he was coming there, and when he got there, I have testified that I was surprised, I was surprised then and I still am surprised." (Hastings, 2B at 2244–45).

There is conflicting testimony as to whether or not the group was waiting for Borders before going to dinner. Donna Mendez, who knew of both Judge Hastings and William Borders prior to that evening, testified that either Judge Hastings or Jesse McCrary said that they "were waiting for somebody else to arrive." (Mendez Myrill, 2A at 511–12, 515). When asked, "did they say who they were waiting for at the time?," she testified: "My recollection is William Borders." (*Id.* at 512).

Jesse McCrary testified that he had not expected Borders to arrive that evening, that he had not discussed Borders with Donna Mendez at any point in time, and he had had no discussions to the effect that they were waiting for Borders to join them. When asked to account for Mendez's recollection that they were waiting for Borders, McCrary testified: "I simply think she's wrong." (McCrary, 2A at 1455–57). Examined about his testimony before the Investigating Committee in 1985 where he had said, "for some reason we were waiting," McCrary testified: "if you're asking me whether we were waiting on someone, I was not waiting on anyone and I was not under the impression that someone was waiting on someone. When I say we were waiting, it was a general term that we were sitting around waiting. It could have been for people to finish a drink. I honestly don't recall." (*Id.* at 1460–61).

Both Pearl and Margaret Dabreau testified that they did not know or have the sense that they were waiting for someone, although Pearl Dabreau had testified before the Investigating Committee that when Borders

arrived "they seemed to have been expecting him." (P. Dabreau Mapp, 2B at 1724, 1727). Nor did Margaret Dabreau have any sense that she had been brought along to be someone's date for the evening. (M. Dabreau Owens, 2A at 1404–05).

After Borders' arrival at the Sheraton, the group had dinner together at the hotel restaurant. (Hastings, 2B at 2245; M. Dabreau Mapp, 2B at 1724–25). The next morning, September 13, Borders picked up Judge Hastings and McCrary and drove them to the airport, dropping Judge Hastings off first. (McCrary, 2A at 1456). Judge Hastings testified that by that point in time Borders had indicated to him that he would be at the Fontainebleau on September 16 and Judge Hastings had agreed to meet him there:

> . . . in that car, I can't say that that is when this occurred, but at some point during the course of that period of time we are talking about, the 11th, 12th general period, William Borders indicated to me that he would be in Miami at the Fontainebleau at or around 8 o'clock on that following week, on Wednesday.

(Hastings, 2B at 2246). McCrary testified that he did not hear Judge Hastings or Borders mention seeing each other the next week at the Fontainebleau Hotel during the ride to, or when the Judge and Borders parted at the airport. (McCrary, 2A at 1456, 1464).

Judge Hastings testified that he spoke by telephone with Borders the next day, on September 14, while he was at the airport, passing through Washington on his way home from having given his speech in Harrisburg. According to Judge Hastings, their agreement to meet at the Fontainebleau on September 16 "was reinforced," and they discussed additional concerns about Hemphill Pride, "who had been through there during that same period of time." (Hastings, 2B at 2247, 2439, 2472–73). The House disputes Judge Hastings' testimony as to the content of the conversation.

b. September 16, 1981: The Fontainebleau Dinner

Regardless of what Borders may or may not have told Judge Hastings, it is clear that Borders did not intend to be at the Fontainebleau Hotel on the evening of September 16. On September 15, Borders flew with his companion Madeline Petty to Las Vegas for the Sugar Ray Leonard-Tommy Hearns championship fight. Their September 15–18 trip had been planned since at least September 1, 1981. (Petty, 2A at 858–59; C. Rogers, 2A at 846; House Exs. 39, 40, 3A at 319, 320). It was apparently on September 15 that Borders, before departing for Las Vegas, had a brief visit with Hemphill Pride, who was in Washington on his way to Atlantic City. (Pride, 2A at 732). According to Pride, they chatted in the coffee shop of Pride's hotel about the fight.

Cynthia Rogers, Borders' secretary, also knew that Borders was attending a mid-September championship fight. (C. Rogers, 2A at 843, 846). Neither Cynthia Rogers nor Madeline Petty were asked by Borders to keep secret the fact that he was attending the fight (*id.* at 846; Petty, 2A at 861), and it was Borders' usual practice to attend major fights. (C. Rogers, 2A at 846).

Judge Hastings, meanwhile, made plans for dinner at the Fontainebleau. On September 15, Judge Hastings invited Essie Thompson, a certified public accountant and social acquaintance, to dinner on September 16, speaking with her again on the 16th to arrange to pick her up. He did not tell her whether they would or would not be dining alone, and no mention was made of Borders. (Hastings, 2B at 2247, 2271; Thompson, 2A at 518–20, 522). Thompson testified that her friendship with Judge Hastings is a continuing one. (Thompson, 2A at 518).

On September 16, at 5:42 p.m., a phone call was made from William Dredge's phone in Miami to a telephone in Las Vegas, Nevada. (House Ex. 10, 3A at 166). The call lasted approximately four minutes. (*Id.*) There is evidence that Joseph Nesline was, like William Borders,

in Las Vegas for the championship fight. (Dredge, 2A at 150; House Ex. 32, 3A at 289–302).

At approximately 7:45 p.m., on September 16, Judge Hastings and Essie Thompson arrived at the Fontainebleau. FBI agents were present and had Judge Hastings under surveillance. (Murphy, 2A at 273; Loucks, 2A at 761). The Judge and Thompson looked around the lobby, looked into two other restaurants, and then proceeded to the main dining room. (Murphy, 2A at 273; Hastings, 2B at 2247–48, Thompson, 2A at 519–20). The parties dispute whether or not Judge Hastings told anyone at the hotel that he was waiting for Borders. Judge Hastings testified that he told both the maitre d' and the hostess that he was waiting for William Borders. (Hastings, 2B at 2247, 2372, 2460). Thompson testified that she did not see Judge Hastings ever speak to hotel staff in an attempt to locate someone. (Thompson, 2A at 521).

Judge Hastings had made reservations for two. (Stip. No. 86, 2A at 273; Hastings, 2B at 2248, 2371). He and Thompson were seated at a table for four, and two of the place settings were removed, without objection by Judge Hastings. (Thompson, 2A at 520; Hastings, 2B at 2372). Before their food arrived, Judge Hastings got up and left the main dining room and the view of the FBI agents who were watching him. (Loucks, 2A at 761). Judge Hastings testified that he walked into the Poodle Lounge, adjacent to the main dining room, and told the attendant there that he was waiting for William Borders. (Hastings, 2B at 2247). When he returned to the table, he told Thompson that he had gone out to look for some friends he was expecting from Washington. (Thompson, 2A at 521; Hastings, 2B at 2248). During dinner, no one stopped by the table to visit with Judge Hastings. (Thompson, 2A at 521). Judge Hastings did not have Borders paged while he was at the Fontainebleau that evening and did not look for him in any of the other four restaurants in the hotel. (Stip. No. 89, 2A at 273; Hastings, 2B at 2372, 2460). Judge Hastings and

Thompson left the Fontainebleau at approximately 10:00 p.m.

Borders and Madeline Petty had attended the fight in Las Vegas as planned. On September 18, they flew from Las Vegas to Washington National Airport, where they parted. Without leaving the airport, Borders boarded a 9:20 p.m. flight to Miami. (Stip. No. 90, 2A at 274; Petty, 2A at 861).

c. September 19, 1981: The $25,000 Down Payment to Borders

On the following morning, Borders and Rico met at the Miami International Airport, as they had planned. (Murphy, 2A at 274; Rico, 2A at 410–11, 414). A transcript of that conversation, secretly recorded by Rico, is reprinted in Part 2A of the record at pages 276–283. The tape recording is in evidence as House Ex. 43a.

During the meeting, Rico acknowledged that Judge Hastings had appeared at the Fontainebleau as promised, and gave Borders $25,000 in marked bills. The two then discussed the remaining stages of their deal. Borders again mentioned putting the balance of the money in "some big escrow," apparently with Dredge, but Rico continued to resist using a middleman. Rico proposed that he make yet another partial payment of $25,000, but Borders rejected the idea, in part, " 'cause the other guys gotta be having twenty." (House Ex. 43b, 2A at 276, 280).

Borders again promised that the order returning the Romanos' forfeited property would be issued "within ten days," that is by September 29. Borders and Rico agreed that they would meet for payment of the balance of the bribe on October 3, because by then Rico would know if the Judge had issued the promised order. (*Id.* at 281). After final payment, the Romanos' prison sentences would be mitigated. (*Id.* at 277). Borders returned to Washington. (Stip. No. 99, 2A at 354). None of the $25,000 was ever recovered, nor was it traced to Judge Hastings. (Murphy, 2A at 404).

According to Judge Hastings, about four or five days after he ate dinner at the Fontainebleau (September 20 or 21), he spoke with Borders about Hemphill Pride, due to "the fact that Hemphill was coming through and Borders was supposed to have further conversations with him when Hemphill was en route to Atlantic City." (Hastings, 2B at 2248). Judge Hastings testified that he also asked him "about the Fontainebleau just in passing," but Borders said nothing about why he was not there. (*Id.*). Although this call does not appear on any of Judge Hastings' or Borders' telephone records, the House accepts that such a call was made (Stip. No. 288, 2A at 284); it does, however, dispute Judge Hastings' testimony as to its content.

3. The House Perspective

After many months of waiting for Dredge's supposed contacts with the Romanos to bear fruit, Borders could, on September 10, finally tell Judge Hastings that the Romanos were ready and willing to join in a bribery scheme. According to the House, Judge Hastings and Borders were in daily contact from September 10 through 14, including two meetings within the 24 to 26-hour period that spanned either side of the Borders-Rico meeting in Miami on September 12; their purpose, it contends, was to discuss the arrangements for the bribery scheme which they believed, at long last, was under way.

From the perspective of the House, the circumstances of September 11 leave no doubt that Borders and Judge Hastings were working to arrange and then not lose an opportunity to be together at Washington National Airport before Borders flew off to Miami to meet Rico on the morning of September 12 and, in addition, that such a meeting between Judge Hastings and Borders in fact occurred. Those circumstances include: (1) Judge Hastings making arrangements on September 11 to leave Miami via a 3:48 p.m. flight which, had it arrived on time, would have him at Washington National Airport

comfortably before Borders left on his intended 7:30 p.m. flight; (2) Judge Hastings' twice calling Borders on September 11 to advise him of delays in the departure of his flight; (3) Borders' changing his departing flight so that he would leave Washington National Airport, not at 7:30 p.m. but instead at 9:20 p.m.; (4) an overlap between Judge Hastings' arrival at Washington National at 8:00 p.m. and Borders' departure from the airport at 9:20 p.m.; and (5) Judge Hastings' arrival at the Sheraton after 10:00 that night.

The House contends that Judge Hastings could have been calling Borders to tell him of his flight's delay only because the two planned to meet. According to the House, Judge Hastings' testimony that he advised Borders of the delay because Borders had said that he would pick the Judge up at the airport does not make sense, because Borders was himself due to depart Washington National Airport in little more than an hour after the Judge's scheduled arrival and could not have been planning to drive him anywhere.

According to the House, further evidence of Judge Hastings' complicity in the bribery scheme is suggested by Borders' remarks to Rico during their September 12 meeting. As the transcript of that conversation shows, Borders was conversant with the *Romano* case. He knew that the Romanos were facing prison sentences, that their property had been forfeited, that a "substantial amount" would need to be returned, and that the brothers had filed notices of appeal which would have to be dismissed in order to reinvest Judge Hastings with the power to reduce their sentences. In addition, he professed the ability to forecast when Judge Hastings would issue his order on the forfeiture matter. The House also points to the fact that Borders, in choosing September 16 for the first show of proof by Judge Hastings, stated that he had no need to consult first with the Judge, thus suggesting that the two were working together in executing these arrangements.

As seen by the House, Borders' arrival at the Sheraton on the evening of September 12 was a planned follow-up to the Borders-Rico meeting, arranged by Judge Hastings and Borders so that they could discuss the morning's events. According to the House, Borders' appearance was thus no surprise to Judge Hastings, and the Judge has lied to disguise his participation in Borders' scheme. The House contends that Judge Hastings, McCrary, Mendez, and the Dabreau sisters spent two hours socializing in Judge Hastings' room because Judge Hastings was awaiting Borders' arrival. It relies principally upon the testimony of Donna Mendez, who knew who Borders was through Jesse McCrary, and who was definite in her recollection that either Judge Hastings or McCrary had said that they were waiting for Borders.

The House and Judge Hastings are in agreement that while the Judge and Borders were together in Washington that weekend, the two discussed the Fontainebleau dinner. The House, however, rejects Judge Hastings' testimony that Borders said that he would be at the Fontainebleau on September 16, noting that Jesse McCrary did not hear the Judge and Borders make any reference to plans to see one other for dinner when Borders dropped Judge Hastings off at the airport on September 13. According to the House, any conversation that took place that weekend or in the telephone call which Judge Hastings said he made to Borders on September 14, instead concerned the plan which Borders and Rico had made to have Judge Hastings arrive at the Fontainebleau at the appointed time as a "show of proof."

In the view of the House, Judge Hastings' arrival at the Fontainebleau, shortly before 8:00 p.m. on September 16, can be seen only as a demonstration of his participation in the bribery scheme. The House rejects Judge Hastings' explanation that he was there because Borders had asked him to join him. It contends that

Judge Hastings was fully aware that Borders would be in Las Vegas for the championship fight, noting that a number of persons knew that Borders would be in Las Vegas that evening, including Cynthia Rogers, Borders' secretary, and Madeline Petty, his companion on the trip, neither of whom had been asked to keep Borders' whereabouts a secret. It argues that if Borders were in fact attempting to trick the Judge into making an appearance at the Fontainebleau by pretending that he, Borders, would be there to join him, he would not have run the risk that the Judge, simply by calling Borders' office or Madeline Petty, would learn that Borders intended to be in Las Vagas that evening. Pride, too, had testified that Borders mentioned his plans to attend the fight, when they were together in Washington on September 15.

Further, the House contends that Judge Hastings' preparations for that dinner—making reservations only for two and telling his date nothing about Borders—as well as his conduct while he was there—permitting two places to be removed, failing to have Borders paged or to otherwise make a concerted effort to find him, and walking through the dining room—show that he intended to dine only with Essie Thompson and be seen by whoever was present on behalf of the Romanos. In addition, it points to the absence of any testimony from the hostess, maitre d' or attendant at the lounge, persons to whom Judge Hastings claimed to have mentioned Borders.

The House also draws significance from the absence of any evidence that Judge Hastings and Borders were in contact between the Fontainebleau dinner on September 16 and Borders' Miami meeting with Rico on September 19. According to the House, Borders knew to go directly from Las Vegas to meet with Rico in Miami, without first checking to see if the Judge had been at the Fontainebleau, because Borders was sure that his co-conspirator would make that first show of proof.

From the vantage point of the House, Borders' receipt of a $25,000 down payment on September 19 showed that the bribery scheme was moving forward as planned. The House disputes Judge Hastings' testimony that on September 20 or 21, he was talking to Borders either about Hemphill Pride or was asking Borders why he had failed to meet him at the Fontainebleau; it apparently sees the call as further communication about events transpiring in the bribery conspiracy.

4. Judge Hastings' Perspective

According to Judge Hastings, the ten-day period from September 10 to 19 was a typically busy time for him, with crowded court days, travel to a speaking engagement and socializing with his friends. He contends that his activities had no connection to Borders' dealings with Dredge and Rico and that the House has created an illusion of guilt by juxtaposing unrelated events that occurred in a small stretch of time.

Judge Hastings contends that his contacts with Borders from September 10 through 14 were purely social and that, in fact, it was he, and not the FBI, who brought his contacts with Borders during that time to light:

> The period that you are talking about, September 10th, 11th, 12th, 13th, and 14th, there was no FBI investigation that produced that period. That was the work of Patricia Williams, Andrew Mavrides, Alcee Hastings and other lawyers that produced that information. And when it was testified to, it would have been just as easy for me to have not said anything at all about that particular period. . . .

(Hastings, 2B at 2245).

With respect to his telephone contacts with Borders on September 10, Judge Hastings contends that each of the calls, beginning with his morning message to Borders that he would not be coming to Washington that day and to please call him back between 4:30 and 5:00

p.m. (Stip. No. 35, 2A at 254), and concluding with their conversation of 5:30 p.m. that day, concerned a change in Judge Hastings' travel plans, necessitated by a jury trial that had not yet finished. According to Judge Hastings, if Borders and Dredge had a conversation that day about the Romanos' supposed willingness to join a bribery scheme, Judge Hastings was not told, and knew nothing about it.

On September 11, Judge Hastings phoned to let Borders know that he would be late in arriving in Washington, because Borders had said he would pick him up at the airport. According to Judge Hastings, he knew nothing of Borders' plan to fly to Miami that night and thus had no way of knowing that Borders, in fact, had no time to drive him anywhere.

Judge Hastings emphatically denied that he saw Borders at Washington National Airport on the night of the 11th, noting that the FBI had witnessed no meeting between the two men. He testified that he did not know that Borders was at the airport or that Borders had delayed his flight plans, and attributes his own delay in checking in at the Sheraton to a wait for his luggage, a circuitous cab ride to his dinner companion's apartment, and their trip to the hotel. In short, whatever Borders was up to on the evening of the 11th and the morning of the 12th, Judge Hastings had not been made privy to it.

Judge Hastings denies that in September, 1981, he had any knowledge of Borders' meetings with Rico. Although Borders did show knowledge of certain aspects of the *Romano* case during his September 12 meeting at the Miami International Airport with Rico, that knowledge did not come from Judge Hastings. From the perspective of the defense, Borders could have learned from other sources that the Judge had sentenced the Romanos to prison sentences and had ordered a forfeiture of their property, and that the Romanos had filed notices of appeal. Those events had occurred in open court

or were otherwise matters of public record. Further, as a lawyer, Borders could have forecast that the *Martino* and *Peacock* decisions of the Fifth Circuit would inevitably require Judge Hastings to return much of the Romanos' property.

Judge Hastings further denies that he expected Borders to arrive at the Sheraton on September 12. As he did at trial, he testified that he and others were socializing, eating hors d'oeuvres and drinking, and simply had not yet moved downstairs for dinner when Borders unexpectedly arrived around 10:00 p.m. He relies upon the testimony of Jesse McCrary, who so testified, as well as that of the Dabreau sisters. He argues that it would have been foolish for him and Borders to arrange to discuss the conspiracy in the midst of a group of social acquaintances. According to the Judge, Borders precipitously returned to Washington to make an in-person appeal so that he could ensure that the Judge would be at the Fontainebleau on September 16, thereby manipulating him into making what appeared to be the first show of proof.

Judge Hastings denies that he knew that Borders had plans to be in Las Vegas. He testified that he did expect to see Borders at the Fontainebleau, although he was uncertain, given his past experience, whether Borders would actually eat dinner with him, and that he made reservations for two, because that was "all I was going to pay for." (Hastings, 2B at 2248, 2464). He further suggests that Essie Thompson may not have been right at his side as they entered the main dining room and thus may not have heard him mention Borders to the hostess or maitre d'. He contends that he afterwards returned to the Fontainebleau to find the persons with whom he had spoken about Borders, but that the maitre d' did not recall the statements and the attendant in the Poodle Lounge could not be found. (*Id.* at 2460). Judge Hastings further notes Thompson's testimony that the Judge, after leaving the table for a short time, told her

on his return that he was looking for some friends from Washington whom he expected to see.

Judge Hastings explained that he did not go to greater lengths to locate Borders at the Fontainebleau because he, the Judge, was where he said he would be, and that if Borders showed up, Borders could find him. In short "this was not the most important dinner in the world" (Hastings, 2B at 2466), and when he and Borders spoke on September 20 or 21, the Judge simply made a passing reference to Borders' nonappearance. Further, neither Borders' failure to appear as expected nor his refusal to provide an explanation afterwards was particularly surprising to the Judge. For example, Borders had failed to meet Judge Hastings and a group of others at the Lion d'Or restaurant in Washington in July of 1981; when Judge Hastings later asked Borders to account for his whereabouts, all Borders "did was laugh and go on to the next subject. . . ." (*Id.* at 2233–34). With respect to how Borders knew that Judge Hastings had been at the Fontainebleau, the Judge suggests that a call from William Dredge to Las Vegas at 5:42 p.m. on September 16 might provide a clue.

Finally, the Judge denies that he had any knowledge of Borders' trip to Miami to meet with Rico and contends that Borders was simply posturing during that meeting when he promised particular actions by the Judge. Judge Hastings sees Borders' reference in the taped conversation to the "other guys gotta be having twenty" as an indication that Dredge was to be paid for his participation in the bribery scheme.

E. EVENTS BETWEEN THE BORDERS-RICO MEETING OF SEPTEMBER 19 AND OCTOBER 9, 1981, THE DAY OF BORDERS' ARREST

1. Overview

After the $25,000 down payment to Borders on September 19, the next event in the scheme outlined by Borders was for Judge Hastings to make a second show of proof by returning, within ten days, a substantial

amount of the Romanos' property. By September 29, however, the promised order had not issued, prompting a number of calls from Rico to find out what the problem was. In the same time frame, Borders made a number of efforts to reach Judge Hastings.

On Monday, October 5, Judge Hastings told his law clerk to complete the *Romano* order that day. According to Judge Hastings, it was also that day that he finally succumbed to Borders' entreaties and drafted letters, which he put into evidence at his criminal trial, that solicited support for Hemphill Pride. At 5:12 p.m., Judge Hastings returned Borders' calls, and in a conversation intercepted by the FBI, told Borders that he had written the "letters for Hemp." The House contends that that conversation was, in truth, a coded discussion of the bribery scheme, with the "letters for Hemp" a reference to the order returning the Romanos' forfeited property, and that the letters produced at trial were a fabrication which helped the Judge to earn an unjustified acquittal.

On October 6, Judge Hastings issued an order returning to the Romanos $845,939 of the $1,162,016 which had previously been forfeited. It was mailed special delivery on the evening of October 6. On October 7, Borders reported to Rico that the order had gone out the previous morning.

The period which falls between the Borders-Rico meeting on September 19 and Borders' arrest on October 9 raises a number of critical issues. First, does the evidence demonstrate, as the House contends, that Judge Hastings again proved his complicity in the bribery conspiracy when he returned a substantial part of the Romanos' property on October 6? Or, as Judge Hastings urges, does the fact that the order did not issue within ten days as predicted show that Borders was not working in concert with the Judge? Second, did Judge Hastings rush the October 6 *Romano* order to completion because, as the House contends, Borders had been

calling him to urge issuance of the already late order? Or, was the order hurriedly completed because, as Judge Hastings contends, his law clerk was due to finish his clerkship and the Judge had a heavy travel schedule during October? Third, were Judge Hastings and Borders exchanging signals about the issuance of the order in their October 5 conversation, or were they simply talking about Pride and their efforts to help him?

This portion of the report contains a section in addition to its usual descriptions of the evidence and the parties' perspectives. In subsection 5, the report will take a broader look at the question of whether Judge Hastings and Borders were in 1981 discussing an effort to assist Hemphill Pride financially and help him regain his membership in the South Carolina bar, in particular, by writing letters on his behalf. That evidence extends past Borders' October 9 arrest to include a conversation which Pride claims to have had with Judge Hastings in January of 1982 and Judge Hastings' production of the "letters for Hemp" to the prosecution in December of 1982, in the month before his criminal trial. The Committee believes that this broader perspective is necessary to evaluate the House contentions that Judge Hastings and Borders used Pride as a convenient smokescreen for contacts that really involved the bribery conspiracy, including the October 5 "letters for Hemp" call, and that the draft letters which the Judge put in evidence at his criminal trial were fabricated in an effort to better his defense.

The evidence discussed is relevant not only to Article I, but to three of the false statement articles as well. Article VII charges that Judge Hastings gave false trial testimony when he testified that he told his law clerk to complete the *Romano* order on October 5 out of concern that the order would not be completed before his clerk's departure. Article VIII charges that Judge Hastings testified falsely when he stated that the October 5 phone

call concerned writing letters to help Hemphill Pride. Article IX charges Judge Hastings with having given false testimony when he testified that the draft letters which he had produced for trial were drafted on October 5 and were the letters referred to in the October 5 call.

2. Statement of Evidence

As noted, on September 19, Borders had told Rico that the Judge would issue his order returning the Romanos' property within ten days, and thus by September 29. (House Ex. 43b, 2A at 276, 277). By the 29th, the order had not issued. (Murphy, 2A at 288). After a phone conversation between Judge Hastings and Borders on September 20 or 21, which, although undocumented, both sides accept as having occurred, there is no evidence of personal or telephone contact between the Judge and Borders until Borders unsuccessfully tried to reach the Judge at his chambers on Friday afternoon, October 2.

By Friday, October 2, authorized wiretap surveillance was in place on Borders' office and home phones. (Murphy, 2A at 287–88). Consequently, there are in evidence tape recordings of Borders' conversations both with Rico and with Judge Hastings from October 2 through 8. On October 2, Rico made a series of phone calls in an effort to reach Borders; they ultimately spoke at 3:10 p.m. (Stip. Nos. 101, 103, 2A at 294; House Ex. 44b, 2A at 335; House Ex. 45b, 2A at 338; House Ex. 46b, 2A at 341; House Ex. 47b, 2A at 344; House Ex. 48b, 2A at 346; House Ex. 49b, 2A at 349). Rico asked Borders what had happened to the forfeiture order. Borders first said that he thought the order had gone out. When Rico insisted that "nothing has happened," Borders said he would check it out: "the only thing I can say is, a lack of communication in terms of through the mail." They canceled the meeting for October 3, when the balance of the money was to have been paid. (Stip. Nos. 101 and 103, 2A at 294; House Ex. 50b, 2A at 290). At 4:50 p.m., Borders' secretary called Judge Hastings'

chambers and was told that the Judge had left for the day. (Stip. No. 107, 2A at 294; House Ex. 51b, 2A at 352).

On Sunday, October 4, at 9:39 a.m., Rico again called Borders to find out about the *Romano* forfeiture order, and Borders responded that "I have not, ah, gotten an answer, cause I haven't been able to talk to anybody." (House Ex. 52b, 2A at 296).

On the afternoon of October 4, Borders called Judge Hastings' home. (Stip. No. 109, 2A at 297). Judge Hastings was not there; he was spending the weekend of October 3 and 4 at a meeting of the Florida Chapter of the National Bar Association in Key Biscayne, Florida. (Hastings, 2B at 2252, 2254; Resp. Ex. 128, 3B at 2896). According to Judge Hastings, his mother took the call, and when he returned, she told him that Borders needed to talk with him about Hemphill. (Hastings, 2B at 2253). He testified that he understood Borders' message to mean: "Same old stuff. Same thing. Money and go on and push up the necessary appeal that was to be circulated." (*Id.*).

On Monday, October 5, Judge Hastings was presiding over the trial of *United States v. Santorelli*. (Carter, 2B at 1773; Hastings, 2B at 2253). It was a long and busy day; the Judge spent "eight solid hours" on the bench. (Hastings, 2B at 2253). At some point in the late morning or around lunchtime Judge Hastings asked his law clerk, Jeffrey Miller, about the status of the *Romano* case. (*Id.* at 2286, 2377; Miller, 2A at 621-22). Miller testified that he again told the Judge what he had told him in early September—that an August decision from the Fifth Circuit Court of Appeals suggested that the Romanos' forfeited property would need to be returned, but he did not think that that was an appropriate result. According to Miller, the Judge again told him not to agonize about returning the property and to get him the order that day. (Miller, 2A at 621). Judge Hastings testified that his urgency resulted from the fact that Miller was scheduled to move on to another clerk-

ship by the end of October and the fact that the Judge had problems in the past with a clerk who had left without completing her work on a big case. (Hastings, 2B at 2286).[14] Miller then left for home to prepare the order. (Miller, 2A at 622).

Judge Hastings testified that sometime during the course of that day, while presiding at the *Santorelli* trial, he drafted three letters: a letter soliciting financial support for Pride, a letter asking for support for Pride in his effort to regain admission to the South Carolina bar, and a cover letter to Pride enclosing those two drafts and asking Pride for his view of his and Borders' efforts to help him. (Hastings, 2B at 2254; House Ex. 154, 3A at 735). According to the House, that testimony is false, and the letters were instead written by the Judge much later, when he had realized their importance to his defense at trial.

At 4:22 p.m. on October 5, Rico again called Borders to ask about the order. Borders told him: "that's been taken care of," and "it was probably today or first thing in the morning." (Stip. No. 115, 2A at 353; House Ex. 53b, 2A at 302, 303).

At 5:12 p.m. that same afternoon, Judge Hastings returned Borders' calls, and the two spoke for 29 seconds. (Stip. No. 117, 2A at 354; Shuy, 2A at 544). Judge Hastings testified that he was calling from his chambers, on a recess from the trial, with the draft letters either on the bench or lying before him on his desk. (Hastings, 2B at 2257). Because the meaning of this conversation is

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[14] Miller's clerkship with Judge Hastings was originally scheduled to end on September 30, 1981, when he was to move on to another clerkship with Judge James Paine. (Hastings, 2B at 2282–83; Miller, 2A at 625). By agreement between the two judges, Miller's term with Judge Hastings was extended into October. Judge Hastings testified that he believed that at any time during October, Miller could have moved on to Judge Paine's chambers. (Hastings, 2B at 2283).

the subject of much controversy and has been scrutinized in great detail, it is reprinted in full here:

> UF:[15] Law Office. One moment. (Placed on hold)
>
> UF: May I help you?
>
> ALH: Girl; I called long distance and you put me on hold. This is Alcee. How you doing?
>
> UF: I'm sorry; but I have all these lines going in here and I didn't know, if I'd known it was you, they could've waited.
>
> ALH: I understand. Bill's gone?
>
> UF: No. Hold on just a minute.
>
> ALH: Alright. (Placed on hold)
>
> WAB: Yes, my brother.
>
> ALH: Hey, my man.
>
> WAB: Um hum.
>
> ALH: I've drafted all those ah, ah, letters, ah, for Hemp. . . .
>
> WAB: Um hum.
>
> ALH: . . . and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?
>
> WAB: Yea.
>
> ALH: Oh. Okay.
>
> WAB: Uh huh.
>
> ALH: Alright, then.
>
> WAB: See, I had, I talked to him and he, he wrote some things down for me.
>
> ALH: I understand.
>
> WAB: And then I was supposed to go back and get some more things.
>
> ALH: Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning.
>
> WAB: Okay.
>
> ALH: Okay.
>
> WAB: Right.
>
> ALH: Bye bye.
>
> WAB: Bye.

---

[15] References to "UF" denote the voice of an "unidentified female." "ALH" refers to Judge Hastings; "WAB" is Borders.

(House Ex. 54b, 2A at 307–08).

Judge Hastings testified that that conversation was nothing but what it appears on its face to be, namely, a discussion in which Judge Hastings told Borders that he had finally written the letters of support for Hemphill Pride, as Borders had, for months, been asking him to do. According to the Judge, the conversation makes reference to the fact that Borders was supposed to talk to Pride and get financial information from him so that the Judge would know how much aid he should solicit for Pride, and closes with Judge Hastings' assurance to Borders that he would send the letters off to Pride in Columbia, South Carolina, in the morning. (Hastings, 2B at 2257).

Judge Hastings explained his question, "The only thing I was concerned with was did you hear—did you hear from him after we talked," as follows: "The only thing—Borders seemed at that time to know a great deal more about Hemphill's financial condition . . . and he was constantly communicating with him in that regard and that's all that I thought that he was talking about." (*Id.*). He further stated: "I was concerned to know whether William Borders had received additional information, or information concern[ing] Hemphill's financial condition." (*Id.* at 2419; *see also id.* at 2380, 2421). When asked what he understood Borders to mean when he said, "See, I talked to him and he wrote some things down for me," he explained, "My understanding was that he was talking about his conversations with Hemphill regarding his financial condition and that's all." He further testified that he thought that Borders and Pride were having those conversations "sometime during either that September period or sometime after he and I talked or after I had gone to the Fontainebleau." (*Id.* at 2258).

Judge Hastings further testified that when Borders said, "I was supposed to go back and get some more things," Judge Hastings understood Borders to be refer-

ring to "the financial conditions as it pertained to Hemphill." The Judge explained that he was "interested in . . . an exact amount, and I wanted to put that exact amount in the letters." (*Id.* at 2420, 2258, 2381). The draft letter in evidence that solicits financial support contains a blank line for the total dollar amount to be raised on Pride's behalf. (House Ex. 154, 3A at 735, 738). Judge Hastings also testified that as of October 5, he was not aware of judgments against Pride. (Hastings, 2B at 2420, 2474–75). He acknowledged that he did not seek any preliminary figures from Borders during that conversation. (*Id.* at 2428–29).

The House introduced testimony that the conversation did not concern the subject of letters for Hemphill Pride. Instead, in the opinion of Dr. Shuy, a linguistics professor at Georgetown,[16] the two men were talking in "a hastily-constructed partial word code." (Shuy, 2A at 537, 555). Shuy noted the presence of pause fillers ("uh") and false starts before key words, ("See, I had, I talked to him and he, he wrote some things down for me"), logical inconsistencies and repeated confirmations of understanding ("I understand"), as being indicative of a coded, rather than a normal, conversation. (*Id.* at 537–44).[17] The House argues, as set forth more fully

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[16] The House offered Dr. Shuy as an expert witness on whether the October 5 conversation between Judge Hastings and Borders was a coded conversation rather than a conversation about "letters for Hemp." Judge Hastings objected to Dr. Shuy's testimony on the ground that linguistics is not a recognized field of expertise, and that Senators should judge for themselves what meaning to attribute to the October 5 conversation. (Shuy, 2A at 526, 529–30). The House argued that the predominant judicial practice is to permit expert testimony on linguistic analysis. (Id. at 526–28). The Committee determined to permit Dr. Shuy to testify "as to the fact that the conversation is or is not coded, but not as to the substance, the meaning of the conversation." (*Id.* at 532).

[17] Judge Hastings gives no credence to Dr. Shuy's analysis. Through cross-examination and Committee questions to Dr. Shuy, testimony was elicited that Dr. Shuy had never previously testified

Continued

below under "The House Perspective," that Judge Hastings and Borders were, in reality, discussing the issuance of the order returning the Romanos' property.

Judge Hastings did not ask his secretary, Betty Williams, to type the drafts which he claims to have written on October 5. (Hastings, 2B at 2382; Williams, 2B at 1755). She would customarily have left by 5:00 p.m., and he did not recess his jury trial that day until later in the evening. (Hastings, 2B at 2383). It is Judge Hastings' testimony, disputed by the House, that after leaving court that evening, he gave further thought to the ethical dilemma with which he had been struggling—whether, as a federal judge, it was appropriate for him to solicit help for Pride—and decided that, despite what he had told Borders, he could not help Pride in that fashion. (Hastings, 2B at 2382–83, 2406–07). He testified that he planned to talk to Borders and Pride together, when they had all assembled in Washington, D.C., for the dinner cruise honoring Borders on October 9. (Hastings, 2B at 2258).

On October 6, Jeffrey Miller gave the order which he had drafted to the Judge's secretary to type. (Williams, 2B at 1745–46; Miller, 2A at 622). Judge Hastings signed the typed order late that afternoon and, at around 6:00 p.m., asked Marilyn Carter, the deputy courtroom clerk, to mail the order out that day. (Carter, 2B at 1767–68; Miller, 2A at 623). Carter testified that Judge Hastings told her: "Sorry for the rush, but this must go out today." (Carter, 2B at 1784). There was no legal deadline requiring the issuance of the order that day. (Deichert, 2A at 40; Miller, 2A at 622; Hastings, 2B at 2379).

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in any case that his analysis demonstrated that a specific conversation contained a secretive word code, although he has worked on such cases (Shuy, 2A at 567), that there were no controlled studies demonstrating the scientific basis for coded conversation analysis (*id.* at 606), and that his analysis in this case was based on only two brief conversations between Judge Hastings and Borders. (*Id.* at 555–56).

Carter mailed the envelope to counsel, marked for special delivery. (Carter, 2B at 1768; House Ex. 8, 3A at 148).

Carter also testified that she thought it appropriate to mail the order out special delivery in light of the calls that had been received from counsel inquiring about when the order would issue. For instance, James Deichert, the prosecutor in the *Romano* case, had called three or four times, once in August, again in September, and again probably on October 7, when he learned that the order had issued. (Deichert, 2A at 51–52). Sometime in September, either FBI agent William Murphy or someone from the Justice Department had told Deichert that "there was a sensitive matter going on" and asked him for background information on the *Romano* case. (*Id.* at 52–53).

On October 7, at 12:19 p.m., Rico called Borders, and Borders told him that the *Romano* order "went out yesterday morning" (Murphy, 2A at 309; House Ex. 56b, 2A at 310). That evening, Borders and Rico were again on the phone. Rico told Borders that everthing was fine, apparently meaning that the *Romano* order had been received. They agreed that Rico would come to Washington with the final bribe payment on Thursday or Friday, October 8 or 9. (Murphy, 2A at 313. House Ex. 60b, 2A at 314–15).

On October 8, Borders and Judge Hastings spoke briefly by telephone. Judge Hastings told Borders his October 9 flight information to Washington, and Borders said that he would be able to get the Judge reservations at the L'Enfant Plaza Hotel, where Borders would be staying. (Stip. No. 126, 2A at 748 House Ex. 61b, 2A at 318–20).

3. The House Perspective

In the view of the House, the foregoing evidence is a powerful demonstration of Judge Hastings' complicity with Borders. It acknowledges that no order issued by September 29, contrary to Borders' prediction, but sees

that omission as a "glitch" in the scheme which was ultimately corrected by Judge Hastings and Borders, with the conspiracy again running smoothly by October 6, when the promised order was issued. According to the House, the pattern of phone contacts between Rico and Borders and attempted phone contacts between Borders and Judge Hastings from October 2 through 4, the October 5 phone conversation between the Judge and Borders, and the urgency with which the order returning the Romanos' property was rushed to completion, can be explained only in view of the alleged conspiracy.

The House notes, first, that each of Rico's inquiries to Borders promptly caused Borders to try to reach Judge Hastings: on Friday, October 2, Rico called Borders to inquire about the order and an hour and forty minutes later Borders was on the phone trying to reach the Judge; on Sunday, October 4, Rico again called Borders and later that day Borders again tried to reach the Judge at home.

Further, when Borders and Rico spoke again on October 5, at 4:22 p.m., Borders told Rico that the order had gone out "today or first thing tomorrow"; less than an hour later Judge Hastings told Borders: "I'll send the stuff off to Columbia in the morning." According to the House, "the stuff" indeed was sent off on October 6, and that "stuff" was the promised order. Here again, in the view of the House, Borders possessed a detailed knowledge of inside workings of Judge Hastings' chambers—in particular, his knowledge, passed along to Rico in their phone conversation of October 5, that the order was coming out on October 6.

The House contends that the October 5 conversation between Judge Hastings and Borders dovetails neatly with the events that were transpiring in the conspiracy. It views that call as the event in which Borders reaffirmed to the Judge that even though the order was going out later than promised, the bribery deal had not derailed. Thus reassured, the Judge let Borders know

that since "there's no great big problem at all," he would send the order off the next day. As articulated by the House Managers in their closing statement to the Committee:

> . . . I think that if you look at it and see, as we see it, when Judge Hastings states that he has "drafted all those ah, ah, letters, ah, for Hemp," he's talking about the *Romano* forfeiture order.
>
> When Borders states, "See, I had, I talked to him and he, he wrote some things down for me," he's referring to his meeting with Mr. Rico, where he received the $25,000 down payment.
>
> When Borders goes on to state, "And then I was supposed to go back and get some more things," Borders is saying that he needs to meet again with Mr. Rico to collect the remainder of the $150,000 bribe.
>
> And finally, when Judge Hastings states, "I'll send the stuff off to Columbia in the morning," he's not talking about letters for Hemp, he's telling William Borders that the *Romano* order will go out the next day. (2B at 2507).

According to the House, Judge Hastings' explanation of the call does not make sense, both as shown by the testimony of its linguist, Dr. Shuy, and by the words of the conversation itself. For example, it questions why Borders' statement that Borders "was supposed to go back and get some more things,"— if read, as Judge Hastings contends, to mean that Borders needed to return to Pride and get some more information about his financial condition—would prompt Judge Hastings to say that there was no problem and he would send the letters out the next morning, when the Judge supposedly had been waiting for that information before dispatching the letters. (Hastings, 2B at 2380, 2421, 2429–30).

The House further contends that this conversation could not have been about efforts to write letters on behalf of Pride because, as discussed more fully in subsection 5, it urges that no such efforts were in fact oc-

curring. It points in particular to Pride's testimony that he had not "[written] some things down for" Borders and had no knowledge of Borders' coming back to him to "get some more things." (Pride, 2A at 681–82, 736; House Ex. 54b, 2A at 307).

Further, the House sees the draft "letters for Hemp," which Judge Hastings produced for his criminal trial, not as evidence that Judge Hastings and Borders were really discussing such letters, but rather as telling evidence of guilt. As described more fully below, it argues that those letters were a fabrication and were created by the Judge to bolster his false defense that he and Borders were talking about writing letters for Pride and not the issuance of the *Romano* order.

Finally, the House contends that the sudden and hurried appearance of the October 6 order, by which "a substantial amount" of the Romanos' forfeited property was returned, can be explained only in light of the fact that the second show of proof which Borders had promised Rico was overdue and needed to be issued immediately lest the bribery deal unravel. Judge Hastings had let the forfeiture matter sit for three months after the July 8 hearing when he had indicated that the forfeiture would be "maintained," there had been neither briefing nor argument thereafter, and when the order did issue, it returned instead most of the Romanos' forfeited property to them. The House further argues that there was no time limit involved which could explain the urgency with which the order was prepared and sent by special delivery.

4. Judge Hastings' Perspective

Judge Hastings agrees that the events which followed the September 19 meeting between Borders and Rico are indeed critical, but contends that they demonstrate his innocence, and not his guilt. He contends that while his appearance at the Fontainebleau Hotel on September 16 could support an inference that he was a participant in the bribery conspiracy, the fact that the order

returning the Romanos' forfeited property was not issued by September 29, as promised, is powerful evidence that he was not involved. Nothing precluded him from telling Miller to complete the order before September 29, the deadline Rico and Borders had set; if the Judge had asked for the order in September, Miller easily could have finished it then.

Judge Hastings submits that Borders had made an educated, but in the end faulty, guess that the order promised by the Judge during the July 8 forfeiture hearing would be out by the end of September—a guess probably premised on the belief that Jeffrey Miller, the clerk with responsibility for the order, would be finished with his clerkship by then. Miller, in fact, had extended his stay until the end of October. Judge Hastings further contends that it would have been a simple matter for Borders, who was a criminal lawyer, to predict that the order would set aside, and not uphold, the previously ordered forfeiture; Neal Sonnett, the Romanos' attorney, had reached that conclusion from his reading of the *Martino* case and had so advised his clients.

According to the Judge, when Borders' prediction on the timing of the order was not borne out, he stalled Rico for several days, until he learned that the order would issue on October 6. Although Judge Hastings does not know how Borders came by that particular knowledge, he suggests security lapses in the courthouse. He further notes that the prosecutor in the *Romano* case had been alerted to the FBI investigation, and that the prosecutor had made a number of calls to Judge Hastings' chambers to check on the status of the order. On that basis, Judge Hastings has theorized that it is possible that Dredge became aware of the timing of the order through the FBI and then passed that information to Borders.

In Judge Hastings' view, it is only when the House trains its telescope on the few days that preceded the is-

suance of the October 6 order that either the timing or the substance of the order can be made to appear suspicious. He explains the passage of three months between his July 8 statement from the bench that the forfeiture would be "maintained," with a written order to follow, and the actual issuance of that order on October 6, by pointing to his law clerk's struggle to find a way to uphold the forfeiture, his law clerk's admission that he simply had not gotten it done, and the inevitable delays that result from the overloaded criminal dockets in South Florida's federal court.

He further contends that his insistence that the order finally get done on October 5 had nothing to do with Borders or any bribery scheme. He was concerned that Jeffrey Miller would leave the clerkship at the end of October without having completed his work in the *Romano* case and that his own busy schedule of trips, beginning on October 7, would keep him out of the chambers and unable to see that the order was done within the month.

Nor, according to the Judge, was there anything untoward about the substance of his October 6 order. Jeffrey Miller had told him in early September that regardless of Judge Hastings' or his clerk's view of the matter, Fifth Circuit law required a return of most of the Romanos' forfeited property. Miller testified that both in early September, before Rico and Borders had ever met, and again on October 5, the Judge had told Miller to go ahead and return the property.

Judge Hastings further contends that although his October 5 conversation with Borders happened to occur the day before the *Romano* order was issued on October 6, the two events are unrelated. He contends that that call was simply and only what it literally appears to be, a quick conversation between two friends who had discussed a subject many times before. According to Judge Hastings, the cryptic nature of the call is explained by his and Borders' many prior discussions on the subject

of Pride and his problems, Judge Hastings' discomfort over the propriety of writing the letters, and Borders' customary way of speaking. As discussed more fully in subsection 5, Judge Hastings urges that Pride's lack of knowledge of their efforts on his behalf does not demonstrate that those efforts were not being made, and he flatly denies the contention of the House that he fabricated the drafts of his letters for, and the cover letter to, Pride.

Finally, Judge Hastings argues that the reading which the House would give to his 5:12 p.m. conversation with Borders on October 5 does not make sense. He contends that it would not make sense for Borders, on October 5, to be telling Judge Hastings about the down payment on September 19 with a planned return for the balance of the bribe, when by all accounts the two had spoken on September 20 or 21. According to Judge Hastings, that old news would not have told Judge Hastings what the House says the Judge wanted to know—namely, that the deal was still on despite the delay in the issuance of the order. Moreover, although Borders told Rico during their 4:22 p.m. conversation on October 5 that the order had been taken care of, it was not until 50 minutes later, at 5:12 p.m., that Borders, according to the House, got that news from Judge Hastings.

5. The Letters to Assist Hemphill Pride

a. Statement of Evidence

As described earlier in this report, there is no question but that Judge Hastings, William Borders, and Hemphill Pride had a long history of friendship before the events of October 9, 1981, and that over the previous years both the Judge and Borders had been a help to Pride. As evidenced in this record, Judge Hastings had provided mostly moral support; he had shown concern for Pride's family (Hastings, 2B at 2422); had insisted that Pride attend his robing ceremony when he assumed the federal bench in October, 1979; and had written to Pride and sent $225 to Pride and his family

when Pride was in prison. (Pride, 2A at 709–10). He had, however, refused to urge Pride's release to a halfway house or to raise legal fees for Pride, on the basis that a federal judge should not do so, and had not lent Pride the legal assistance he requested on a post-conviction petition. (Pride, 2A at 684).

Borders' support appears to have been more tangible. Borders had found Pride a lawyer when Pride was indicted in 1977; while Pride's appeal was pending, Borders brought him to Washington, found him a job, and let him stay rent-free in an apartment Borders owned. Like Judge Hastings, he sent Pride money when Pride was in prison. He had also referred Pride to an individual on the parole board after Pride's release from prison in March of 1981. (Pride, 2A at 684–85, 708–09).

The parties are in fundamental dispute, however, as to whether, and to what extent Judge Hastings and Borders were actually helping Pride in the latter half of 1981. According to Judge Hastings, he and Borders were in active and frequent communication concerning efforts to help Pride. He testified that their help took the form of letters seeking support for Pride, which, according to the Judge, he drafted on October 5 and discussed with Borders in their phone call of that day. According to the House, no such efforts were occurring, and the Judge and Borders were using Pride and his problems as a convenient cover for their bribery conspiracy.

Judge Hastings testified that he was under mounting pressure from Borders from the time of Pride's release from prison in March of 1981, intensifying from July through October, to use his stature to solicit the financial assistance that Pride by all accounts needed. (Hastings, 2B at 2221, 2472–73; Pride, 2A at 722–23). According to Judge Hastings, it was he who was "the initiator" in his and Borders' plan to ask their associates to write letters supporting Pride's readmission to the South Carolina Bar. (Hastings, 2B at 2249.)

It was Judge Hastings' testimony that from the time of Pride's 1977 indictment onward, virtually every conversation that he and Borders had throughout that period touched on Pride. (*Id.* at 2235.) More specifically, he testified that he and Borders had a fair amount of "telephone traffic" about Pride around the time of Pride's release in March, 1981 (*id.* at 2221); that he and Borders had conversations with one another and Pride about the good news that Pride had been given an indefinite suspension rather than permanent disbarment in May (*id.* at 2228); and that when Judge Hastings came to Washington, D.C., for an American Bar Association meeting from July 17–20, he and Borders talked about legal research that a colleague's law clerk had done relating to Pride's "ongoing matters." (*Id.* at 2233.)

Judge Hastings further testified that it was during the National Bar Association's annual convention at the end of July, when he, Borders and a group of their colleagues passed the hat for Pride and called to encourage him to join them (Hastings, 2B at 2234–35; Pride, 2A, at 709), that Borders became persistent about helping Pride, and that the Judge and Borders began having "active discussions" about writing letters to solicit financial and professional support for Pride. (Hastings, 2B at 2472). Although Judge Hastings expressed concern about the ethical propriety of a federal judge involving himself in that effort, Borders brushed aside those concerns and continued to pester him throughout the following months. (*Id.* at 2249).

Pride testified that during the late summer of 1981 he was taking steps toward his reinstatement to the South Carolina Bar, even though he was not eligible to apply for readmission until May of 1983. (Pride, 2A at 678–79). He was consulting both Borders and Judge Hastings about a strategy for reinstatement. (*Id.* at 679, 711; Hastings, 2B at 2236). In that regard, Pride scheduled a meeting with Chief Justice Lewis of the South Carolina Supreme Court for August, which was then rescheduled

for September. Pride's purpose was to make amends with Chief Justice Lewis, whom Pride knew he had offended when, a number of years earlier, he had made a speech critical of what he considered to be racial inequalities at the court. (Pride, 2A at 681, 711). Pride particularly solicited Judge Hastings' advice: "I told Judge Hastings that Judge Lewis was a man of considerable age, he was in his seventies and he was a southern white man, and that I didn't want to get on my knees. . . ." (*Id.* at 681). Both Judge Hastings and Pride testified that they had lengthy discussions on the subject of Pride's approach to Chief Justice Lewis. (Hastings, 2B at 2236; Pride, 2A at 681).

Judge Hastings further testified that he and Borders spoke a lot during September because Pride was coming through Washington, D.C. and "Borders was supposed to have further conversations with [Pride]"; he had been told that Pride had been through Washington two times. (Hastings, 2B at 2248). Pride stated that he went through Washington, D.C., in mid-September, on his way to Atlantic City, on the day before the Leonard-Hearns championship fight in Las Vegas. (Pride, 2A at 732). According to Pride, Borders met Pride for a quick chat at the coffee shop of Pride's hotel; they spoke about the fight, but there was no mention of fundraising or writing letters for Pride. (*Id.* at 732–33).

According to Judge Hastings, on October 5, he momentarily overcame his reluctance to write the letters. He testified that some time during that very busy day, he drafted those letters, as well as a transmittal letter to Pride, as he sat on the bench presiding over a jury trial. (Hastings, 2B at 2254). Through expert testimony introduced by the House, it was shown that these letters cannot be scientifically dated. (Attenburger, 2A at 923, Cantu, 2A at 926; House Ex. 145, 3A at 693; House Ex. 147, 3A at 694). Judge Hastings, however, testified that he had thought that the Government would be able to run a scientific test that "would clearly demonstrate

that the letters were written at a certain time." (Hastings, 2B at 2489).

The originals of those draft letters were introduced by Judge Hastings at his 1983 criminal trial, and those originals, introduced here by the House, are likewise in evidence in these proceedings. (House Ex. 154, 3A at 735). The letters consist of six pages of handwritten text, in ink, on the front and back of three 8½" x 13" yellow-lined, legal tablet pages. (*Id.*). There are three undated letters, each 1½ to 2 pages in length. The first is a cover letter addressed to "Hemp" and asking for approval of the two enclosed draft letters, addressed "Dear —." One of the enclosed drafts asks for financial assistance; the other seeks letters in support of Pride's readmission to the South Carolina bar. The drafts have no strikeouts or interlineations. (*Id.*). Over an objection as to relevancy, Judge Hastings was permitted to introduce drafts of other letters which he believes he wrote while on the bench on another occasion. The letters were introduced to support both his testimony that it was not unusual for him to work on other matters while presiding in court and that he was able to write fluidly with few, if any, corrections made in his drafts. (Hastings, 2B at 2255; Resp. Ex. 106, 3B at 2829).

According to Judge Hastings, it was the three draft letters, marked as House Exhibit 154, to which he referred in his phone conversation with Borders at 5:12 p.m. on October 5. (Hastings, 2B at 2257). He further testified that he did not have his secretary type the letters, probably because she had already left for the day, and that, after returning home he had a change of heart and returned to his view that he would be engaging in an impropriety if he sent the letters. (Hastings, 2B at 2258).

Judge Hastings did not tell Borders that he had decided not to send the letters, even though he spoke with him on the telephone again on October 8. (*Id.* at 2384; House Ex. 61b, 2A at 318). He testified that he planned

to tell Borders when they would be together with Pride on October 9. Although the three were together on the morning of the 9th, the Judge did not mention the matter; Judge Hastings testified that Pride's wife and small child were there as well that morning, and he anticipated that a more opportune moment would arise over the course of the day. (Hastings, 2B at 2261–62, 2385, 2449).

It was Pride's testimony that he had no inkling of any letter writing plans or efforts by either Borders or Judge Hastings during the summer or fall of 1981. He had sought their advice on his efforts to gain reinstatement to the bar, but he was orchestrating his own efforts. (Pride, 2A at 679, 682, 718). A number of prominent individuals who were colleagues of the Judge, Borders, and Pride likewise did not know of any letter writing effort. (Latimer, 2B at 1712–13; McCrary, 2A at 1459, 1476–77; E. Rogers, 2B at 1721; Perry, 2B at 1734; Chisholm, 2B at 1889).

Judge Hastings was questioned extensively by the Committee concerning the whereabouts of the draft letters between October 5, 1981, the date on which he testified they were drafted, and December, 1982, when they were produced to the prosecutor in his criminal trial. Judge Hastings testified that he believes that he initially put the drafts in one of his desk drawers in his chambers: "that must have been what I did." (Hastings, 2B at 2309–10, 2452, 2475). He testified that he does not remember exactly when he first pulled them out, but that it would have been within a week or so after Borders' arrest; when he read a *Miami Herald* article on October 11 which detailed the charges, "it became a concern." (*Id.* at 2475). The indictment against Judge Hastings and Borders was returned on December 29, 1981. Judge Hastings further testified that he kept the letters in his possession until he first gave them to one of his attorneys, Andrew Mavrides, which "would have to have been November or December [1981] or there-

abouts" (*id.*), and that Mavrides kept the letters in the safe at his office. (*Id.* at 2310). On cross-examination, the House questioned the Judge about Mavrides' testimony before the Investigating Committee where he stated he may have seen, but had no recollection of seeing, the draft letters. (*Id.* at 2336). Judge Hastings responded that Mavrides had acknowledged in his Investigating Committee testimony that he must have discussed the letters with the Judge. (*Id.* at 2336–37).

On January 19, 1982, the trial judge in Judge Hastings' case issued an order requiring the defendant to produce the documents he intended to introduce as evidence at trial. (Stip. No. 206, 2A at 895). By that date, the prosecution had produced various documents to Judge Hastings, including the tapes of the intercepted telephone calls between the Judge and William Borders. (Stip. No. 207, 2A at 896). In mid-February, 1982, Judge Hastings filed the "Defendant's Reciprocal Discovery Inventory No. 1." (Stip. No. 208, 2A at 893). He did not at that time produce these or any drafts of letters about or to Hemphill Pride, and did not show the letters to Joel Hirschhorn; Hirschhorn had served as one of the Judge's lawyers from January 19, 1982, until he withdrew on March 2, 1982. (Stip. Nos. 207–211, 2A at 896, 893, 896; Hastings, 2B at 2454). According to Judge Hastings, he did not like what he considered to be Hirschhorn's propensity for discussing matters with the Government, rather than waiting to meet "the prosecution in the courtroom. . . ." (Hastings, 2B at 2386–87, 2479).

On March 2, 1982, Judge Hastings' trial was stayed, pending appeal of the motion he had filed that challenged the constitutionality of prosecuting a federal judge prior to completing impeachment proceedings against him. (Stip. No. 213, 2A at 896). At that point, the charges against Borders and Hastings were severed, with each defendant to be tried separately.

Judge Hastings testified that he twice removed the letters from Mavrides' safe, once to show them to John Shorter, who was Borders' lawyer, before Borders' trial in March, 1982, and later, to produce them to the Government as part of his reciprocal discovery. (Hastings, 2B at 2481–82). Judge Hastings could not recall the circumstances of the first time he retrieved the letters. (*Id.* at 2482). When asked whether he had gone over to get them or if Mavrides had brought them over, Judge Hastings responded: "I don't remember, . . . I really don't." (*Id.*). Judge Hastings testified that he brought the draft letters to Shorter but that Shorter was not interested in them. (*Id.* at 2477–79, referring to Shorter's testimony before the Investigatory Committee). He likewise did not "have a distinct memory" of how he came to return the letters to Mavrides' safe after bringing them to Shorter. (*Id.* at 2482).

Borders was tried and convicted before a jury in Atlanta, Georgia, from March 22 until March 29, 1982. (Stip. No. 217, 2A at 896). Neither Borders nor Judge Hastings was called as a witness to testify, although Judge Hastings stated that he believed that his willingness to testify was conveyed to Borders' lawyer. (Hastings, 2B at 2479, 2488). Mavrides attended Borders' trial, and ordered and received copies of the trial transcript. (*Id.* at 2358). The prosecutor at the *Borders* trial argued the absence of the "letters for Hemp" as strong evidence of Borders' guilt. (2B at 2450).

Judge Hastings lost his appeal to block his prosecution, and the stay of his criminal trial was lifted. At some point, his attorney, Mavrides, "began to unravel." Mavrides was experiencing severe physical and emotional problems. (Hastings, 2B at 2310). Mavrides had been put out of his office, but he told Judge Hastings that he had opened the safe, whereupon the Judge, in the dark of night and feeling "eerie," went to Mavrides' office, found the safe open and its contents rummaged, and retrieved his letters. (*Id.* at 2310, 2454–55). Accord-

ing to Judge Hastings, this retrieval of the letters occurred around the week that he produced the letters to the Government in December, 1982. (Stip. No. 220, 2A at 893; Hastings, 2B at 2482–83). Mavrides was unable to defend the Judge at trial, was later disbarred, and has since died. (Hastings, 2B at 2310–11).

During the early part of 1982, Judge Hastings and Borders' counsel had each interviewed Pride in preparing for trial. Upon Borders' request, Pride, whose role as a potential witness became apparent when he was called to testify before the grand jury, went to Washington from January 21–24, 1982, to be interviewed by John Shorter, Borders' lawyer. (Pride, 2A at 697). Shorter gave Pride a transcript of the October 5 conversation between Judge Hastings and Borders, and had him listen to the tape of the conversation. Although Pride recognized the voices, the conversation "was not coherent. It did not mean anything to me." (*Id.* at 698–99).

After two more listenings, however, Pride realized that the transcript of the recording, which made reference to "letters for him," was in error, and that the correct phrase was "letters for Hemp." (*Id.* at 699). Pride testified: "When I saw that, I knew that whatever they were intended to do, I wasn't going, you know, [to] be a part of." (*Id.* at 717).

Shortly thereafter, Pride received a call from Judge Hastings, who came to Columbia, South Carolina, and asked to interview Pride the next day at a lawyer's office. (*Id.* at 700). Judge Hastings refused Pride's invitation to join Pride and his mother for dinner. (*Id.*). They met at the lawyer's office, where the Judge asked Pride if he had been intimidated by the FBI. Pride said he had not been intimidated, and they discussed Pride's grand jury testimony. (*Id.* at 701; Hastings, 2B at 2297).

After the interview, Pride again asked Hastings to come by his house, and also asked to drive him to the airport; Pride testified that he wanted to get the Judge alone because he wanted to know what was happening.

(Pride, 2A at 701–02). Judge Hastings was not eager to talk to him and refused, saying he would take a cab. Pride insisted and prevailed. (*Id.* at 702; Hastings, 2B at 2297).

Pride and Judge Hastings gave completely different accounts of the conversation that ensued during the ride to the airport. According to Pride, Pride brought up the subject of the letters: "I wanted to know, you know, what kind of letters were they writing, and what was this all about." (Pride, 2A at 702). Pride further testified that when the Judge said that he and Borders were trying to help him by soliciting money, and by asking National Bar Association members to write letters in support of his readmission, Pride told the Judge "that was an officious act; that if you were doing that, you should not have been doing that because I did not ask you to do that. That would not help me, and I did not want you to do that." (*Id.*). According to Pride, he could have used financial help, but a letter writing campaign from the Judge, Borders, and the National Bar Association would have done him no good; his was a local problem with the white power structure. (*Id.*).

Pride was questioned by Committee members at considerable length concerning the conversation between himself and Judge Hastings in the car that day. (*Id.* at 719–20, 728–30, 737). He testified, as he had before the Investigating Committee, that in the car Judge Hastings conveyed to him that it was important for him to remember or recall that he and Borders were trying to draft letters to help him, when, in fact, Pride knew nothing about such letters. (*Id.* at 730). He also testified that: "I don't take that, that Al was asking me to lie. But he certainly was trying to convince me that his efforts were legitimate." (*Id.* at 720). When pressed as to whether he thought Judge Hastings was trying to convince him to adopt an alibi for him or whether he was trying to explain to Pride what really had happened, Pride testified: "[I]t didn't make me no difference in the

car, I wanted him to understand, first of all, that if he did write them, he had no business writing them and if he did [not] write them and wanted to use them as an alibi, he couldn't count on me because I wasn't going to do that." (*Id.* at 737).

While Judge Hastings agrees that it was Pride who insisted on the car ride (Hastings, 2B at 2297), his description of their discussion is entirely different. Judge Hastings believed that Pride was cooperating with the Government and was wired:

> The very first thing he said to me, he turned and he said, "Blood," he says, "you aren't telling me what's going on and Bill Borders isn't telling me what's going on and I want to know what is going on." I rolled my window down and I looked out the window and I told him, I used a curse word and told him I don't know what you're talking about. There was a filling station—I know South Carolina, I visited him frequently, and there was an area where there was a brand-new filling station and a shopping area and I began commenting about how fast things were growing there in Columbia and I refused to engage in any conversation with him.

(*Id.* at 2298). According to Judge Hastings, it was on another occasion—either at the lawyer's office or elsewhere—that he explained to Pride "exactly what Borders and I were attempting to do on his behalf." (*Id.* at 2305).

After his January, 1982, meeting with Judge Hastings, Pride was interviewed by the FBI on several occasions. (Pride, 2A at 712–714). When, some time later, he alerted the FBI to the fact that he had gotten a message that Judge Hastings had called and would call back, the FBI asked permission to record the conversation when the Judge again called. (*Id.* at 714). In order to guard against any suggestion that he was involved in a scheme and to protect his progress toward reinstatement in the bar, Pride agreed: "I did not want the Gov-

ernment to conjure a situation where all of a sudden it became, instead of a duet, a trio." (*Id.* at 703–04).

During the conversation, Judge Hastings told Pride that he did not believe that Pride was cooperating with the Government and stated that he, the Judge, would be well able to defend himself at trial. (Hastings, 2B at 2298–99; Pride, 2A at 704; House Ex. 128, 3A at 520–32).

b. The House Perspective

In the view of the House, there is an absence of any evidence, other than from Judge Hastings' testimony, that during the summer and fall of 1981, Judge Hastings and Borders were in fact discussing the writing of letters to help Hemphill Pride. The House points to Pride's lack of knowledge that any such letters were being written, the fact that Pride could not apply for reinstatement to the bar for nearly two more years, and the testimony of their colleagues that they likewise did not know of any such effort. It also questions how the alleged discussions could have continued without any apparent resolution over so many months.

Further, it sees the draft letters which Judge Hastings produced for his criminal trial, not as substantiation of Judge Hastings' claim, but rather as important evidence that the Judge was a guilty participant in the bribery conspiracy who needed to improve on his defense. The House finds suspicion in the physical appearance of the letters, Judge Hastings' conduct after he allegedly drafted the letters on Ocrober 5, and what it considers to be the belated production of those letters to the prosecution.

First, the letters, which Judge Hastings testified he drafted while attending to a jury trial, are completely unedited, without a single crossout or change of phrase having been made.

Second, Judge Hastings never made any mention to anyone of those drafts at or near the time of their claimed creation. He did not ask his secretary to type the drafts. He did not tell Borders that he had changed

his mind and would not be sending the letters, even though he spoke with Borders by telephone on October 8 and was together with Borders for a considerable part of the morning of October 9, including a period of time when Pride was with them as well. Further, Judge Hastings' claims to have kept the drafts when, according to the House, if he were innocent he should not have had any reason to consider them important and would have discarded them. He did not show the letters to Joel Hirschhorn, his attorney, during any time before Hirschhorn withdrew from the case in March, 1982. With respect to Judge Hastings' testimony that he chose instead to give them to another of his lawyers, Andrew Mavrides, the House challenged that testimony with reference to Mavrides' testimony before the Investigating Committee.

Third, the House contends that Judge Hastings' failure to produce the draft letters when he made his document production to the Government in February of 1982, and his subsequent production of those drafts some ten months later in December of that year, is further evidence that those drafts were not in existence on October 5. The House argues that it was only after Borders had been tried and convicted in March of 1982, without benefit of any letters for Pride, that Judge Hastings decided to create some tangible evidence to support his defense that he and Borders were engaged in an effort to draft letters for Pride.

The House also sees Judge Hastings' January, 1982 conversation with Pride in Columbia, South Carolina, where the Judge had come to interview Pride after Pride's appearance before the grand jury, as an effort by the Judge to encourage Pride to adopt, as his own, the view that Judge Hastings and Borders were writing letters on his behalf. The House sees Pride's testimony as truthful, and particularly credible in light of the longstanding friendship between Pride and Judge Hastings. It casts Pride's decision to let the FBI monitor a

call between himself and Judge Hastings as an act of self-defense, brought on by Judge Hastings' and Borders' use of his name and problems as a cover for their bribery scheme.

c. Judge Hastings' Perspective

Judge Hastings contends that he and Borders were continually in contact about efforts to help Hemphill Pride and that Borders became particularly insistent that the Judge lend his name to a letter writing effort in July of 1981. He testified that the conversations continued over a number of months because he continued to express reservations about his involvement in the effort and Borders continued to pester him. In addition, the Judge was waiting for Borders to speak with Pride and get more details about his financial situation. Judge Hastings also contends that Pride's insistence that he knew nothing about the effort demonstrates only that no one had yet told Pride about that effort, and, further, that the Judge had not yet spoken to their colleagues because of his continued reservations about writing the letters.

Judge Hastings emphatically denies that he fabricated the draft letters. He offered evidence to show that he is able to draft with little or no correction and explained that when he left the bench on the evening of October 5, it was highly unlikely that his secretary would have been there to type the drafts. He further contends that he intended to, and would have told Borders of his decision not to send the letters, had an appropriate opportunity arisen on October 9.

Judge Hastings defends the fact that he did not show the draft letters to Joel Hirschhorn or produce them to the Government until December of 1982. Contrary to Hirschhorn's approach, it was not his inclination to share his strategy with the Government any sooner than was required. He contends that he chose instead to give the letters to his other attorney, Andrew Mavrides, in November or December, 1981, and that the letters re-

mained in Mavrides' safe during most of the time in question. He denies any suggestion that those letters were drafted after Borders' trial and conviction and contends that he offered them to John Shorter, Borders' lawyer before Borders was tried in March, 1982.

Finally, Judge Hastings contends that Pride's version of their January, 1982, car ride to the airport in Columbia, South Carolina, was false. According to Judge Hastings, he thought that Pride was wired and that their longstanding friendship was already a thing of the past when they took that car ride. He argues that under those circumstances he would surely not have incriminated himself by urging an alibi upon Pride. When asked why he thought that Pride would lie, the Judge testified that he believed that Pride had an indistinct memory of those events but had adhered to his story in an effort to better his progress toward restoration of his law license. (Hastings, 2B at 2463). He views Pride's willingness to permit the FBI to record the conversation of his closest friend as a powerful demonstration of the lengths to which Pride would go to regain his license.

F. THE EVENTS OF OCTOBER 9, 1981

1. Overview

On October 9, 1981, Judge Hastings, Hemphill Pride and several hundred others gathered in Washington for an evening dinner cruise to honor William Borders upon the completion of his tenure as president of the National Bar Association. It was also on that day that Borders had arranged to meet again with H. Paul Rico, the undercover agent posing as Frank Romano. With the forfeiture order having issued on October 6, Rico was coming to Washington to pay the $125,000 balance due Borders.

At approximately 12:47 that afternoon, Borders was arrested as he drove with Rico from their meeting place, with $125,000 in cash on the seat between them. Shortly after Judge Hastings learned of Borders' arrest and the FBI's desire to interview him, he left for Flori-

da, taking a $50 cab ride to Baltimore-Washington International Airport, rather than leaving from the much closer Washington National Airport, and then, at the airport, making a series of phone calls in a manner which he acknowledges was designed to avoid FBI interception. The FBI located Judge Hastings late that night at the home of Patricia Williams. He consented to be interviewed and spoke with the FBI for approximately two hours.

Most of the factual evidence relating to the events of October 9, much of it detailed through FBI surveillance and interviews, is undisputed. The inferences which the parties draw from that evidence, however, diverge sharply. The principal question presented by this part of the evidence concerns Judge Hastings' conduct upon learning that Borders had been arrested. Did Judge Hastings, as the House contends, flee Washington after learning that Borders had been arrested for a bribery that somehow involved his courtroom because he knew that he was a guilty participant in the bribery and needed time to prepare before talking with the FBI? Or, as Judge Hastings testified, did he hastily return to Florida in a state of innocent distress, both because he was concerned about how this news would affect his invalid mother and because, as his friend Hemphill Pride had urged, he felt he could best confront at home whatever problems Borders' arrest would cause him? An additional issue raised by the events of the day is whether the FBI unjustifiably deprived Judge Hastings of an opportunity to demonstrate his innocence when it arrested Borders without waiting to see whether any of the $125,000 in bribe money would come into the Judge's possession.

The October 9 evidence pertains not only to the first Article of Impeachment, but also to Article XIV, which alleges that Judge Hastings gave false testimony at his trial concerning the phone calls which he claimed to have made after learning of Borders' arrest and before

leaving his hotel room for Florida and to Article XV which alleges that Judge Hastings testified falsely concerning his motives for taking a plane on October 9, from the Baltimore-Washington International Airport, rather than from Washington National Airport.

2. Statement of Evidence

a. The Day's Events Before Judge Hastings Learned of Borders' Arrest

At approximately 10:40 a.m., Borders picked Judge Hastings up at Washington National Airport. (Stip. No. 130, 2A at 748; Murphy, 2A at 321; House Ex. 129, 3A at 533). Judge Hastings had flown into Washington from Albany, Georgia, where he had given a speech the previous day. (Hastings, 2B at 2259; Resp. Ex. 96, 3B at 2670; Resp. Ex. 97, 3B at 2672). A testimonial dinner and boat cruise in honor of William Borders, who had completed his tenure as President of the National Bar Association, was scheduled for that evening, and Judge Hastings was a co-sponsor of the event. (Stip. Nos. 127–129, 2A at 353; Resp. Ex. 85, 3B at 2646).

Judge Hastings and Borders drove to and checked in at the L'Enfant Plaza Hotel, where Judge Hastings was placed in a room adjoining Borders' suite. (Stip. Nos. 131, 132, 2A at 748; Hastings, 2B at 2259–60, 2261; House Ex. 129, 3A at 533). Judge Hastings testified that when he commented that all he had done was check in, Borders stated: "Don't worry about it." (Hastings, 2B at 2261). Judge Hastings took that to mean that Borders would cover the cost of the room, except for his incidental expenses. (*Id.* at 2261–62). After sending his suit to be cleaned, Judge Hastings and Borders visited in Pride's room with Pride and his wife, Shirley Pride, who had likewise arrived for the testimonial dinner. (*Id.*, H. Pride, 2A at 690–91; S. Pride, 2B at 1792). According to Judge Hastings, he was feeling ill. (Hastings, 2B at 2261–62).

Shortly after 11:00 a.m., Judge Hastings and Borders left the hotel. (Stip. No. 133, 2A at 748; Hastings, 2B at

2262; House Ex. 129, 3A at 533, 534). According to Judge Hastings, Borders told him that he would take him to a luggage store, because the Judge had luggage that was in disrepair, but instead Borders drove to the D.C. Superior Court saying that he had a trial due to begin. (Stip. No. 133, 2A at 748; Hastings, 2B at 2262; House Ex. 129, 3A at 533, 535). They stayed at the courthouse briefly, drove to a liquor store, and returned to Borders' office shortly before noon. (Stip. No. 133, 2A at 748; House Ex. 129, 3A at 533, 535).

Judge Hastings testified that Borders received his messages when they arrived at the office, and Judge Hastings went upstairs to the restroom. Upon his return downstairs, Judge Hastings found Borders on the telephone. (Hastings, 2B at 2263). At approximately 11:13 a.m., H. Paul Rico, posing as Frank Romano, had called Borders' office and left a message. (Stip. No. 136, 2A at 354; House Ex. 62b, 3A at 381; House Ex. 66, 3A at 389). Borders called Rico at approximately 11:52 a.m. (House Ex. 66, 3A at 389). In an FBI intercepted conversation, Rico told Borders that he had "a lot of paper," and they arranged to meet in an hour. (House Ex. 64b, 2A at 322, 323). According to Judge Hastings, he did not know with whom Borders was speaking. (Hastings, 2B at 2349). Borders finished his telephone calls and said: "I'm running out of time." (*Id.* at 2263). Judge Hastings testified that he then asked Borders to show him the way to a luggage store, because he still needed his bag repaired. They walked out the back door of Borders' office, Borders pointed him in the direction of Georgetown, and they parted at approximately 12:02 p.m. (*Id.*; House Ex. 129, 3A at 533, 536).

After he and Borders left Borders' office and went their separate ways, Judge Hastings made a number of stops, at a bookstore, a dress shop and a luggage shop, where he purchased a new "man bag" after finding he could not get his damaged one repaired. (Hastings, 2B

at 2264, 2350). Judge Hastings then took a taxi back to the L'Enfant Plaza Hotel. (*Id.* at 2350).

Upon returning to the L'Enfant Plaza Hotel, Judge Hastings testified that he went straight to his room, where he ordered room service, and made several calls. (*Id.* at 2264–65, 2267). The time stamp on the room service ticket indicates that the order was placed at approximately 12:58 p.m. (Blocker, 2A at 838; Resp. Ex. 47, 3B at 2502). At some point thereafter, Pride joined Judge Hastings in Judge Hastings' room, where they again ordered room service (Hastings, 2B at 2265; Pride, 2A at 691; Resp. Ex. 46, 3B at 2501), and then went down to a lounge at the L'Enfant Plaza for drinks. (Hastings, 2B at 2265; Pride, 2A at 691–92).

Judge Hastings and Pride give different accounts of their discussion during the time they ate and drank together. According to Judge Hastings, he and Pride discussed the restoration of Pride's license to practice law, Pride's prison experience, and his efforts at "trying to repair himself" in Columbia, South Carolina. (Hastings, 2B at 2265). Judge Hastings testified that he did not specifically discuss his decision not to write letters soliciting support for Pride because he "wanted to confront [Pride] and Borders at the same time about that." (*Id*). According to Pride, their conversation focused on the anticipated boat ride for William Borders, their children and Judge Hastings' mother. Pride testified that they did not speak about anything relating to Pride's progress toward reinstatement to the bar. (Pride, 2A at 692). They then returned to their respective rooms. (Hastings, 2B at 2265; Pride, 2A at 692–93).

b. Borders' Arrest and Other FBI Activities that Afternoon

Borders arrived at Room 103 at the Twin Bridges Marriott Hotel in Arlington, Virginia, at approximately 12:37 p.m. (House Ex. 66, 3A at 389). The FBI had wired that room for sound and had also set up video cameras in the adjacent room, hoping to record the contact be-

tween Rico and Borders. (Murphy, 2A at 324; Amoroso, 2A at 1366; House Ex. 65b, 2A at 326). Borders, however, refused to stay in the room. After knocking on the door, he instructed Rico to get the money and to take a ride with him. (Murphy, 2A at 324; House Ex. 65b, 2A at 326). Rico got into Borders' car with the money and placed it on the seat between them. (Stip. No. 142, 2A at 355). At approximately 12:40 p.m., Borders was arrested at the entrance ramp to Interstate 395 near the Twin Bridges Marriott parking lot (House Ex. 66, 3A at 389), taken into custody and transported back to Room 103 of the Twin Bridges Marriott. (Murphy, 2A at 328).

The FBI did not videotape or make a sound recording of the events that took place in Room 103 after Borders had been returned there because, as Agent Murphy testified, "we normally don't." (*Id.* at 379). Borders was read his *Miranda* rights and apprised of the charges and evidence against him. (*Id.* at 329; House Ex. 66, 3A at 390). The FBI played tapes of Borders' conversations with Rico, hoping that the strength of the FBI's evidence against him would persuade him to cooperate. (Murphy, 2A at 329, 397; Amoroso, 2A at 1366–67; Bird, 2A at 756; House Ex. 66, 3A at 390). Borders asked to speak with his attorney, John Shorter. (Stip. No. 145, 2A at 355; Murphy, 2A at 329, 397; Amoroso, 2A at 1367; House Ex. 66, 3A at 390). Shorter arrived at the Twin Bridges Marriott at approximately 1:31 p.m. (Stip. No. 146, 2A at 355; Murphy, 2A at 329; House Ex. 66, 3A at 391). Shorter and Borders had a series of brief, private conversations (House Ex. 66, 3A at 391), and it soon became clear that Borders would not cooperate with the FBI. (Murphy, 2A at 398).

The FBI's decision on October 9 to arrest Borders at the time of the payoff was consistent with its previously-made plan. (Murphy, 2A at 324, 377). The FBI hoped to convince Borders to cooperate with the FBI in implicating Judge Hastings (*id.* at 379; Raskin, 2B at 1894), and planned to interview Judge Hastings only if it

could not secure Borders' cooperation. (Murphy, 2A at 378–79; Resp. Ex. 24, 3B at 2413). Explaining why the decision had been made to terminate the undercover operation by arresting Borders at the payoff without first seeing whether any of the money would go to Judge Hastings, Agent Murphy explained:

> [O]ur initial feelings were that these two gentlemen would be sophisticated enough that the actual cash which, given both of their legal backgrounds, that they could have been aware that the serial numbers from that particular money could have been, in fact, recorded. I always believed that the money was somehow going to be laundered in some way prior to it being distributed.

(Murphy, 2A at 391). Martin Raskin, who in 1981 was Chief of the Criminal Division of the United States Attorney's Office for the Southern District of Florida, testified that both he and the United States Attorney for the Southern District of Florida had disagreed with the plan to arrest Borders on the scene, and that they had conveyed that disagreement to the Public Integrity Section of the Department of Justice the night before Borders' arrest. (Raskin, 2B at 1893–95). He testified:

> I thought that that was a terrible idea. [United States Attorney] Wampler and I strongly suggested to the Public Integrity Section that they not proceed in that fashion, that they allow the money to go its course and follow the money. We suggested putting a Title III wiretap in Mr. Borders' office, in Mr. Borders' car, we felt that would be a more appropriate way to proceed, and our thought was that that way you would either know that Judge Hastings was guilty or you would know that Judge Hastings was innocent, but one way or the other, there was a better chance that the issue would be clarified.

(*Id.* at 1894).

Agent Murphy testified that as events developed on the scene, with Borders refusing to enter the motel room for the payoff and instead proceeding to drive away with Rico and the money, the FBI felt compelled to make an immediate arrest because of concern for Rico, who was not wearing a transmitter, but only a body recorder. The agents were also concerned that they were losing control of the money and their ability to follow it. (Murphy, 2A at 324, 404, 407).

At approximately 1:55 p.m., as Borders was transported from the Twin Bridges Marriott to the FBI Washington Field Office, Agent Murphy and two other agents went to Borders' law office to serve a subpoena for certain of Borders' records and hoping to interview Judge Hastings. (*Id.* at 329). Murphy testified that while there, at approximately 2:45 p.m., he spoke by telephone to John Shorter, Borders' lawyer, and asked if he knew where Judge Hastings was. (*Id.* at 330). Murphy asked Shorter to refer his and his fellow agent's name and the telephone number of the Washington Field Office to Judge Hastings. (*Id.*). Murphy then left for the L'Enfant Plaza Hotel. (*Id.*).

Over the course of the afternoon of October 9, FBI agents in Florida were interviewing both Patricia Williams at her office at the Equal Employment Opportunity Commission and the staff at Judge Hastings' chambers. (Loucks, 2A at 758; Simmons, 2A at 764). Two FBI agents were at Williams' office from approximately 3:00 to 3:45 p.m. About midway through that interview, Williams' secretary told her that she had an urgent call from a client, but according to Agent Wendy Loucks, the client's name was stated, and it was not Judge Hastings. (Loucks, 2A at 759). Eleven agents had arrived at Judge Hastings' chambers by 2:50 p.m., and left some two and one-half hours later; they served a subpoena duces tecum, obtained documents and interviewed the staff. Their conduct was the subject of a formal com-

plaint filed by the Judge and an internal FBI investigation. (Simmons, 2A at 796–98).

c. Judge Hastings Learns of Borders' Arrest and Leaves for Florida

Upon returning to his room, Pride received a telephone call from Borders' lawyer, John Shorter. (Pride, 2A at 693). Shorter asked Pride to get in touch with Judge Hastings and tell him that "there were two FBI agents that wanted to interview him because William Borders had been arrested . . . [and] charged with bribery, and that the purported or alleged bribe had taken place in Judge Hastings' courtroom." (*Id.*). According to Pride, Shorter gave him the names and number of the agents and the name of an attorney who could accompany the Judge to an interview. (*Id.*).

Pride then called Judge Hastings' room, told him there was an emergency, and that the Judge should come to his room right away. (*Id.*). Pride took his two-year-old son and met Judge Hastings as the Judge was exiting the elevator. (H. Pride, 2A at 694; Hastings, 2B at 2265–66). Pride relayed to the Judge the information which Shorter had given him. (Pride, 2A at 694) As told by Judge Hastings: "he described to me the fact that Bill Borders had been arrested . . ., and somewhere during all of the repeating of that he continued to tell me that they were going to get someone named Ken Mundy to represent me, and I informed him that I didn't need Ken Mundy or any other lawyer, . . . " (Hastings, 2B at 2266). Pride added this description:

> He was stunned. He was as I was when John [Shorter] told me. He commenced to tell me again, "Now, what did John say? Where is Bill?" And I said, "Al, not only that, John said the bribe, you know, took place in your courtroom. . . . What cases has Bill"—I mean, I wanted to know what in the world was going on. And Al said, "No, Bill's never tried a case before me in my courtroom." So I said, "Well, you know, you tell me what you know about it." He said, "I don't know anything."

(Pride, 2B at 694).

Both Judge Hastings and Pride agree that it was Pride who advised the Judge that, under the circumstances, he should not contact the FBI in Washington, but go back to Florida because "a man's better off on his own turf." (Hastings, 2B at 2266; Pride, 2A at 695). According to Pride, Judge Hastings was shocked and uncertain of what to do, asked about Mundy and how to get in contact with him, and seemed to be "heading in [the] direction" of calling the FBI agents in Washington (Pride, 2B at 695, 725), but Pride dissuaded him:

> . . . "Al," I said, "I would not call these agents. . . . Under these conditions and if you don't know anything about this, there is no way in the world that I would let the FBI interview me in Washington, D.C. . . . I would take a home-court advantage. I would go home and get in contact with them, get in contact with your lawyer."

(*Id.* at 695).

Pride then went back to his room to leave his son with his wife. According to Pride, the Judge went with him, and then the two went up to Judge Hastings' room together to discuss the matter further. (*Id.* at 694). Pride further testified that the two men were together from the time they met outside the elevator until the Judge left the hotel, and that the Judge made no telephone calls in Pride's presence. (*Id.* at 696–97). Judge Hastings, however, testified that Pride was mistaken, and that he did not go to Pride's room after Pride told him of Borders arrest. Rather, Pride returned to his own room with his son, and the Judge returned to his room alone. (Hastings, 2B at 2266). Shirley Pride, Pride's wife at that time, also testified that she recalled that Pride came back to the room with their son and stayed from 20 to 30 minutes before leaving again. (S. Pride, 2B at 1793).

Judge Hastings testified that as soon as he got back to his room, he made two phone calls and charged them to

his room, one to his mother and another to Patricia Williams, who was then his fiancee and has since served as his lawyer. (Hastings, 2B at 2266). The calls are not reflected in the hotel's computerized system for recording calls made by guests from, and billed to, their rooms. (Avery, 2A at 813). AT&T keeps records, usually for six months to a year, which could have been reviewed to determine if the computerized system had somehow failed to record a call properly, but there are no longer any such records for October, 1981. (*Id.* at 816, 820–21, 826). Further, the L'Enfant Plaza Hotel no longer has records which could show whether the calls which Judge Hastings claims he made were, in his counsel's words, "mispunched into the administrative column, or somewhere else." (Blocker, 2A at 836).

Whether or not they had remained together continuously, both Judge Hastings and Pride agree that they were again together as the Judge collected his things and prepared to leave Washington. (Hastings, 2B at 2266; Pride, 2A at 696). Pride offered to drive the Judge to the airport, but the Judge declined. In Pride's words, the Judge said: "Listen, you're on probation. You go back with your wife. You don't need to be involved in this." (Hastings, 2B at 2267; Pride, 2A at 696). The Judge left the hotel in a taxi, without checking out, paying his room service bill, or picking up his suit from the valet. (Stip. No. 168, 2A at 750; Hastings, 2B at 2267, 2359). The Judge testified that he gave Pride a $100 bill before he left, with instructions to pay for the Judge's incidental charges and to pick up his suit. (Hastings, 2B at 2359). Pride, however, stated that Judge Hastings did not give him any money, nor did he ask him to pay any room charges or pick up a suit. (Pride, 2A at 696).

Even though Washington National Airport is only about four miles from the L'Enfant Plaza Hotel (Stip. No. 182, 2A at 753), Judge Hastings took a taxi, at a cost of $50, to Baltimore-Washington International Air-

port. (Stip. No. 184, 2A at 750). He had not checked on the availability of flights at Washington National Airport before leaving the hotel (Stip. No. 266, 2A at 753), but he testified that he believed there was a flight from Baltimore which would have arrived in Fort Lauderdale sooner than any from Washington National Airport. (Hastings, 2B at 2361). There was a 4:35 p.m. direct flight to Miami, leaving from Washington National Airport with 14 seats available. (Stip. No. 181, 2A at 753).

At the airport, Judge Hastings made a series of phone calls from pay phones. At 4:37 p.m. and again at 4:43 p.m. Judge Hastings called his mother. (Stip. No. 186, 2A at 751; Hastings, 2B at 2362). At 5:06 p.m., he called Patricia Williams at her home in Lauderhill, Florida, from a second pay phone and told her to call him back at a third pay telephone. (Stip. Nos. 187 and 188, 2A at 751; Hastings, 2B at 2362). When Williams called Judge Hastings back, he told her to go outside, find a pay phone and call him back, which she did. (Stip. Nos. 189, 190, 2A at 751, 752; Hastings, 2B at 2362–63). Judge Hastings took the number of the pay phone which Williams had called from, moved to another pay telephone, and called her back. (Stip. No. 191, 2A at 752). The Judge testified that though at one point he changed phones because a child was crying, and Williams had to change locations at another point because she was picking up her child, for the most part, these maneuvers were an attempt to talk to Williams without being overheard because he feared that her phones were tapped and that someone at the airport might be eavesdropping. (Hastings, 2B at 2363).

Judge Hastings then made a 6:30 p.m. reservation on a flight scheduled to arrive in Ft. Lauderdale, Florida, which was his home, at 8:38 p.m. (Stip. No. 192, 2A at 750; Hastings, 2B at 2364; House Ex. 134, 3A at 542). He disembarked at Ft. Lauderdale, and rented a car; his own car was parked at the Miami International Airport.

(Stip. Nos. 183, 194 and 195, 2A at 750; Hastings, 2B at 2364). He testified that he went home, learned that his uncle was there with his mother and then drove to Patricia Williams' home. (Hastings, 2B at 2364).

At approximately midnight on October 9, two FBI agents arrived at the home of Patricia Williams. (Simmons, 2A at 768). Judge Hastings said he was expecting them and invited them inside. (*Id.*). Judge Hastings was advised of his rights and questioned for over two hours. (*Id.* at 768–69). The Judge answered every question that he was asked. (*Id.* at 769; Hastings, 2B at 2270). The interview was memorialized by Agent John Simmons in an FBI 302 which he drafted on the morning of October 10, 1981, from notes he had taken and reviewed with the Judge the previous evening. (Simmons, 2A at 785, 791; Resp. Ex. 42, 3B at 2497).

3. The House Perspective

In the view of the House, Judge Hastings' abrupt departure from Washington after learning of Borders' arrest should be viewed as strong evidence that he was, and knew he was, guilty. It claims that the hastiness of Judge Hastings' departure, his failure to check out or pick up his suit, his decision to take a $50 cab ride through Friday afternoon traffic to the Baltimore-Washington International Airport when a much easier route back to Florida was available, coupled with the "cloak and dagger" series of phone calls he made at the airport, all portray a panicked and guilty man who was trying to avoid the FBI, at least until he had time to think and put his story together.

The House rejects Judge Hastings' testimony that his precipitous departure was prompted, in part, by telephone calls to his mother and Patricia Williams. It notes that the L'Enfant Plaza Hotel computerized phone records show no record of such calls and that there is no evidence of malfunction in that system. (Stip. No. 175, 2A at 830; Avery, 2A at 813; Blocker, 2A at 830–31; House Ex. 140, 3A at 605). Further, Pride tes-

tified that he was continually in Judge Hastings' presence at the L'Enfant Plaza Hotel after he told him of the arrest and saw him make no phone calls. Finally, the House contends that Patricia Williams had no opportunity to receive the call which Judge Hastings' said he made from the hotel, because she was being interviewed by the FBI during that approximate time period. According to the House, Judge Hastings indeed made those calls, but only after he got to the Baltimore-Washington International Airport, and that at his trial he lied about their timing to provide a motive for his precipitous departure from the L'Enfant Plaza Hotel.

From the perspective of the House, the FBI's plan to arrest Borders as he drove away from the Twin Bridges Marriott Hotel with Rico was a good faith choice between legitimate law enforcement techniques. After Rico had made his final payment to Borders, there were two ways of testing Judge Hastings' involvement, or lack of it, in Borders' scheme. The FBI could have let Borders leave with the money, with Borders still believing that Rico was Romano and the scheme was on course. The FBI could then have attempted to trace the money to determine whether Judge Hastings obtained any of it. Alternatively, the FBI could have sought to obtain Borders' cooperation by overwhelming him with proof of the FBI's knowledge of his guilt.

The FBI concluded that the first approach was unlikely to succeed because Borders and Judge Hastings were experienced criminal lawyers who would have appreciated the need for laundering money. The FBI tried the second approach, unsuccessfully as it turned out, of seeking to obtain Borders' cooperation. Whatever the merits and demerits of these law enforcement methods as a theoretical matter, once Borders disrupted the original payoff plan by starting to drive away with Rico, the agents in charge of the operation concluded that their immediate responsibility was to secure Rico's safety.

4. Judge Hastings' Perspective

Judge Hastings likens the news of Borders' arrest and the sense he had "that there was a storm cloud abrewing" to having a pistol stuck in his face or being in a serious automobile accident: "a whole set of circumstances about your life go across your mind in a flash." (Hastings, 2B at 2266). In the "awesome confusion" of the day, he followed Pride's advice and headed home, primarily because of his concern over how the media's response to the news would affect his mother: "If I have to bear the brunt of being concerned about my mama, then I'm going to bear it. That was my primary concern over and above anything that took place at that time." (*Id.* at 2269).

Judge Hastings recognizes that the L'Enfant Plaza Hotel records do not show the phone calls to his mother and Patricia Williams that he says he made. He contends, however, that other phone calls he made that day were also not recorded and that there may have been an error in the hotel's computerized system which he can no longer reconstruct because AT&T and the L'Enfant Plaza no longer have the necessary records. Judge Hastings discounts Hemphill Pride's testimony that the Judge made no calls by noting that Shirley Pride contradicts her husband's testimony that her husband and the Judge were continuously together; he further points to testimony from his mother which may be read as corroborating his testimony that he called her from the L'Enfant Plaza Hotel. (M. Hastings, 2B at 2049). In sum, he testified before the Committee that given his state of shock, he may in fact have confused the calls which he believes he made from the hotel with those made from the Baltimore-Washington International Airport but insisted: "I assure you that the phone calls [from the hotel] that I've described are my best recollection of the events of that day, and they were not described to obtain any advantage." (Hastings, 2B at 2268).

Judge Hastings further contend that the disorder of his departure has been exaggerated. The Judge testified that he did not pay his room bill because he had understood that Borders was to take care of it (*id.* at 2261), and that contrary to Pride's testimony, he left Pride with $100 and asked him to pay for his incidentals and to pick up his suit. (*Id.* at 2359).

When pressed to explain why his immediate reaction, upon learning of Borders' arrest, was to leave for Florida rather than proceed promptly to the FBI to clear up whatever the problem was, Judge Hastings testified as follows:

> . . . on October 9th, the magic words were said, "FBI," and when those magic words occur, I would think that ordinarily, and maybe even customarily, it would be expected that a Federal judge would run over to the Attorney General or the FBI office. I did not and, looking in retrospect, I'm positive that that was a mistake on my behalf.
>
> But my experiences have been different than have a lot of people, and my experiences with the FBI pre-the period that I . . . became any kind of judge, was not the same kind of experience that most people have, and I don't have the same belief that they were going to be my protectors, and I wish that I had or could have had that.
>
> The basis for that statement emanates from an experience that I had as a lawyer where a person was killed in Boca Raton, Florida, in the police station . . . before it was over that family and myself felt set upon by the FBI.

(*Id.* at 2470). In further response, the Judge expressed his desire not to inject his background into these proceedings, but explained: "things just are not the same for me as they are for members of the United States Senate in America." (*Id.* at 2486).

Further, Judge Hastings disputes any notion that by returning home, he was in flight from the FBI. The FBI agent who interviewed him at the home of Patricia Williams that night testified, in response to questioning

from Judge Hastings, that he located the Judge at a place where he expected to find him and that the Judge did not act like he was "fleeing." (Simmons, 2A at 782–83). When asked by the Judge whether, rather than describing him as sounding "rehearsed" at that midnight-to-2:00 a.m. interview, "it is a better characterization to say that I told you everything you asked me, and it has been determined for all intents and purposes to be the truth," the agent responded: "Yes." (*Id.* at 793).

Finally, Judge Hastings assails the FBI's decision to arrest Borders as he left the Twin Bridges Marriott on October 9. Judge Hastings contends that by deciding not to let the money run, the FBI let slip the opportunity to demonstrate conclusively whether or not Judge Hastings was a participant in the bribe. Judge Hastings finds support for that view in the testimony of Martin Raskin, Chief of the Criminal Division of the United States Attorney's office for the Southern District of Florida in 1981, who testified that both he and the United States Attorney for the Southern District of Florida believed that the FBI should have allowed Borders to move freely with the money to see where it would go.

G. THE FALSE STATEMENT ARTICLES: ARTICLES II–XV

1. Overview

As noted previously in this report, Judge Hastings is charged in Articles II–XV with fourteen separate instances of giving false testimony in the 1983 trial in which he was found not guilty of conspiring with Borders to solicit a bribe. With the exception of Articles X–XIII, the evidence on these perjury articles is similar, and in some instances, identical, to portions of the evidence on Article I, and Judge Hastings has stood by that trial testimony in presenting his defense here. The evidence pertinent to each of those false testimony articles, and the parties' positions in regard to that evidence, have been discussed in the earlier sections of this report, and, accordingly, are treated in summary fash-

ion here. Articles X–XIII are treated for the first time and in some detail in this section; they involve testimony given by Judge Hastings at his criminal trial which he acknowledges is not accurate and which he no longer urges in his defense.

Although much of the evidence on the false statement articles overlaps that presented on Article I, the false statement articles do constitute fourteen separate and distinct charges, and a two-thirds vote to convict on any one of them would be legally sufficient to remove Judge Hastings from office. Whether a different verdict is appropriate on these charges, or any of them, from the verdict on the bribery conspiracy article is a matter for the judgment of each Senator.

2. Discussion of the False Statement Articles

Articles II, III, and IV charge that Judge Hastings lied in denying that he and Borders had agreed to solicit a bribe, modify the Romanos' sentences, or return their forfeited property. Judge Hastings, of course, denies that he had any such agreement with Borders, and contends that his testimony to that effect was truthful. The evidence on these articles is coextensive with the evidence in Article I.

Article V charges that Judge Hastings lied in denying that his appearance at the Fontainebleau Hotel on September 16, 1981, was a signal of his participation in a bribery scheme with Borders. Judge Hastings denies the allegation and urges the truthfulness of his trial testimony. The specific evidence regarding the Fontainebleau dinner is discussed in Section II (D), but, as is true for each of the false statement articles, the entirety of the evidence on Article I may be pertinent.

Article VI charges that Judge Hastings lied in testifying that he did not expect Borders to appear at the Sheraton Hotel in Washington on September 12, 1981. Judge Hastings denies the allegation and contends that he testified truthfully. The specific evidence regarding

Borders' appearance at the Sheraton Hotel is discussed in Section II (D).

Article VII charges that Judge Hastings lied about his motive for telling his clerk, Jeffrey Miller, to complete the *Romano* forfeiture order on October 5, 1981. Judge Hastings denies the allegation and contends that he testified truthfully. The specific evidence regarding the circumstances of the issuance of the *Romano* order is discussed in Section II (E).

Article VIII charges that Judge Hastings lied when he testified that his October 5, 1981 telephone conversation with William Borders was about letters for Hemphill Pride rather than a coded communication in furtherance of the *Romano* bribery scheme. Judge Hastings denies the charge and asserts that his testimony was accurate. The specific evidence regarding the October 5 phone call is discussed in Section II (E).

Article IX charges that Judge Hastings lied when he testified that on October 5, 1981, he wrote the draft letters for Hemphill Pride which were tendered into evidence in this 1983 trial and that those letters were the letters referred to in his October 5 phone call with Borders. Judge Hastings denies the allegations and contends that his testimony was truthful. The specific evidence relating to the letters for Pride is discussed in Section II (E)(5). The evidence pertaining to the October 5 phone call is particularly pertinent, as well.

Articles X–XIII charge that Judge Hastings lied when he testified that in 1981 he talked to Hemphill Pride at telephone number 803–758–8825 on May 5, 1981, and September 2, 1981; at telephone number 803–782–9387 on August 2, 1981; and when he said that Pride could be contacted during July 1981, at telephone number 803–777–7716. Judge Hastings concedes now that his testimony was false, in that he was mistaken; he denies, however, that he had knowledge that any of the statements were false at the time that he made them. He further asserts that at the time of his testimony, he be-

lieved those statements to be true. (Hastings, 2B at 2319–20).

Telephone number 803–782–9387 belonged to Eleanor Golar-Williams, who was, in 1981, the ex-mother-in-law of Patricia Williams. Patricia Williams was, in 1981, Judge Hastings' fiancee and served as his counsel before and at his criminal trial. (Golar-Williams, 2A at 1482). Telephone number 803–758–8825 belonged to the office number of Carolyn McIver, who was a social acquaintance of Judge Hastings (McIver, 2A at 931). Telephone number 803–777–7716 was the office number of Dr. Andrew Chisholm, who was a political associate of William Borders. (Chisholm, 2A at 971). Each of these individuals testified that Pride had no access to their telephones in 1981. (Golar-Williams, 2A at 1007; McIver, 2A at 949; Chisholm, 2A at 978).

The House views Judge Hastings' trial testimony that he reached Pride at the foregoing numbers as a knowing fabrication, designed to promote his interests at his criminal trial. According to the House, Judge Hastings was trying to lend credence to his defense that he was working with Borders to help Pride, and his incorrect identification of calls to Pride could not have been inadvertent. It contends that the deliberate falsity of this testimony is further shown by the fact that one of the numbers belonged to the ex-mother-in-law of Judge Hastings' trial attorney, Patricia Williams, who, according to the House, must have known that the Judge would not have talked to Pride at that number.

Judge Hastings' position, by contrast, is that he merely made a good faith mistake when he testified about contacting Pride at those three numbers. (Hastings, 2B at 2389–90). He testified that because those numbers appeared on Judge Hastings' phone bill as calls to Columbia, South Carolina, where Pride lived, he believed that Pride could be reached there. He further testified that he, and not Patricia Williams, had come across those numbers in his phone bills in the midst of

late-night trial preparation and, in essence, jumped to the incorrect conclusion that they constituted contacts with Pride. (*Id.*). In general, Judge Hastings maintains that his mistake was, and is, of little consequence, given the fact that Pride has testified that he and Judge Hastings were in telephone contact during 1981.

Article XIV charges that Judge Hastings lied when he testified at his 1983 trial that he called Patricia Williams and his mother from the L'Enfant Plaza Hotel on the afternoon of October 9, 1981. Judge Hastings testified that he believed that his testimony was true when he gave it in 1983 and today believes it to be true as well (Hastings, 2B at 2353). He did acknowledge the possibility that his testimony on this point could have been mistaken, but again urges that if so, the incorrectness was inadvertent and not deliberate. (*Id.*). It is the House position that Judge Hastings' testimony about these calls could not be a mistake; it argues that the Judge claimed that he made those calls before leaving the L'Enfant Plaza to better his explanation for the hurried nature of his departure. The evidence on the subject of the October 9 phone calls is discussed in Section II (F).

Article XV charges that Judge Hastings lied when he testified about his motives for leaving Washington via the Baltimore airport on October 9, 1981. Judge Hastings denies the allegation and contends that his testimony in this regard was truthful. The evidence on the subject of Judge Hastings' departure from Washington, D.C., on October 9 is discussed in Section II (F).

III. THE WIRETAP DISCLOSURE CHARGE: ARTICLE XVI

A. THE NATURE OF THE CHARGE

In Article XVI, the House accuses Judge Hastings of disclosing highly sensitive information to Mayor Stephen Clark of Dade County, Florida, which he learned from documents that were submitted to him as the supervising judge of an FBI Title III wiretap. The House contends that the result of that disclosure was to thwart important investigations into public corruption. Both

the House and Judge Hastings view Article XVI as a very serious charge, which if ture, would warrant his removal from office.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2520 (1982 and Supp. V 1987), vests authority in federal district judges to grant an order approving the interception of wire or oral communications. 18 U.S.C. § 2516 (Supp. V 1987). Law enforcement officers are required to submit an application which describes the alleged criminal activity, the identity of persons involved, the particular communications which they expect to intercept, and the facilities from which they expect to make those interceptions. 18 U.S.C. § 2518(1)(b) (Supp. V 1987). Upon signing an order approving a wiretap, the judge places the application under seal to protect the confidentiality of the information which it contains. 18 U.S.C. § 2518(8)(b) (1982). Law enforcement officers must thereafter submit reports which detail the progress that has been made and the need for continued interception, 18 U.S.C. § 2518(b) (1982), and after the expiration of 30 days, must apply for and justify an extension on the wiretap. 18 U.S.C. § 2518(5) (Supp. V 1987).

Unlike the alleged bribery conspiracy involving Judge Hastings and William Borders, the allegation in Article XVI has never been tried to a jury. The Justice Department decided not to prosecute Judge Hastings for the alleged disclosure and instead referred the charge to the Eleventh Circuit Judicial Council, which in turn formed an Investigating Committee. Although that Committee called a number of witnesses, it did not report formal findings and conclusions as was done by the Investigating Committee which examined the bribery conspiracy. Instead, the matter was taken up by the House Subcommittee which was already engaged in its investigation of the bribery and false testimony charges, and eventually resulted in Article XVI of the Articles of Impeachment.

The evidence relating to Article XVI is largely undisputed, either by virtue of stipulations of fact or uncontested evidence presented to the Committee. There is no question that there was a disclosure of information gathered pursuant to an FBI wiretap and that that wiretap was being supervised by Judge Hastings. The only question is whether, as Mayor Clark testified, Judge Hastings was the source of that disclosure.

B. SYNOPSIS OF THE PARTIES' POSITIONS

1. The House Case

The House contends that Judge Hastings disclosed information which he had learned in his supervision of an FBI wiretap when he approached Dade County Mayor Stephen Clark at a breakfast meeting of the Metro Miami Action Plan (MMAP) on September 6, 1985, and warned him to stay away from "Waxy" Gordon, who was "hot" and using the Mayor's name in Hialeah, Florida. The House relies upon the direct testimony of Mayor Clark, who unequivocally so testified, but acknowledges that the Mayor made what it sees as an honest mistake with respect to the timing of the disclosure on September 6.

Mayor Clark testified that Judge Hastings warned him about Gordon after the Judge gave the keynote address at the MMAP breakfast meeting; according to the House, the disclosure must have occurred before the breakfast meeting began. The House contends, however, that other evidence proves that the Mayor was telling the truth when he testified that Judge Hastings was the source of the disclosure. As shown by wiretap surveillance, Mayor Clark and the others to whom he in turn passed the information were aware of the investigation in short order after he and Judge Hastings were together on September 6. The House further emphasizes the similarity, on the one hand, of the information presented to Judge Hastings in the confidential wiretap reports and the comments which he made in reviewing them, and on the other hand, the information which Mayor

Clark said he learned from Judge Hastings. It also contends that the Mayor had no motive to make a false accusation against Judge Hastings.

Finally, the House defends the FBI's investigation of this matter by reference to testimony from the FBI that it did not undertake a wide-ranging investigation because all information which it learned corroborated Mayor Clark's statement that Judge Hastings made the disclosure and because it wanted to protect Judge Hastings' and Mayor Clark's privacy. It further contends that Judge Hastings' alternative theories as to how the disclosure occurred, which implicate present or former FBI agents in the loss of important investigations and the endangerment of undercover informants, and which embroil Mayor Clark in a complicated scheme to pin blame on Judge Hastings, do not withstand scrutiny.

2. Judge Hastings' Defense

Judge Hastings categorically denies that he disclosed any information to Mayor Clark. Further, he demonstrates that the story as told by the Mayor cannot be true. According to Mayor Clark, Judge Hastings warned him about "Waxy" Gordon *after* the Judge had completed giving his speech on the morning of September 6, had left the podium and was shaking hands and greeting people on his way out the door; the Mayor then had his campaign manager summon Gordon to a meeting. The evidence establishes, however, that there was no occasion for Mayor Clark and Judge Hastings to speak after Judge Hastings completed his speech, and that the Judge left immediately through the back of the stage. Moreover, an FBI wiretap establishes that the call from Mayor Clark's campaign manager summoning Gordon to a meeting was made at 8:58 a.m. that morning, well before the Judge had completed his speech and thus well before Mayor Clark says that the Judge had made the disclosure.

With respect to the contention of the House that Mayor Clark was wrong only about the timing of the

disclosure on September 6, and not the fact that Judge Hastings made the disclosure that day, Judge Hastings denies that he warned the Mayor about Gordon at any time. There are no witnesses to any disclosure before the conference began, and Monsignor Bryan Walsh testified that, while he was briefly together with both Mayor Clark and Judge Hastings before the program began, he saw no private conversation between the two. Moreover, Judge Hastings notes that he was the one who brought to light the fact that he had seen Mayor Clark, as well as the Monsignor, earlier on the morning of September 6, before the conference began, and that he surely would not have furnished that information if he were guilty: "I brought it up in an effort to assure that the truth with reference to these proceedings would be had." (Hastings, 2A at 1287).

Judge Hastings faults the Government for failing to explore sources, other than himself, for the disclosure to Mayor Clark, or to otherwise conduct what he considers to be an adequate investigation. Although he does not consider it his burden to demonstrate how the Mayor could have come by the information about Gordon, he offered evidence to suggest some involvement on the part of FBI agents. A number of current and former Miami FBI agents, including agents who were involved in the bribery conspiracy investigation of Judge Hastings and William Borders, were in social contact with Mayor Clark, and an aide to Mayor Clark had called and asked an FBI agent as early as July of 1985 whether the Mayor was under FBI investigation.

C. STATEMENT OF EVIDENCE

1. Judge Hastings' Authorization and Supervision of an FBI Wiretap for Investigations of Public Corruption in Miami

During 1985, the United States Attorney for the Southern District of Florida conducted a number of undercover investigations into public corruption in the Miami area. The investigations focused on the Interna-

tional Longshoreman's Association (ILA), Local 1922 at the port of Miami, corrupt zoning practices in Hialeah, Florida, and police corruption in North Bay Village, Florida. (Martinez, 2A at 1026–27; Santini, 2A at 1090; Mazzella, 2A at 1174). Those three undercover operations were linked together through the use of an informant, Johnny Rivero, who is now deceased. The ILA investigations, which involved organized crime figures or their relatives, and the police corruption investigation, which focused upon armed police officers believed to be involved in narcotics, were particulary dangerous for Rivero. (Santini, 2A at 1094).

The investigation into Local 1922 of the International Longshoreman's Association sought to probe allegations that union members were being forced to make kickbacks in order to gain employment at the port of Miami, and further, that there was drug trafficking at the port. (Stip. No. 289, 2A at 1049; Martinez, 2A at 1027). The investigation began with an effort by FBI informant Rivero to gain entry into the union. (Martinez, 2A at 1027). After Rivero's initial efforts to gain membership in the union were unsuccessful, he was introduced to Kevin "Waxy" Gordon, zoning code enforcer for the City of Surfside, Florida. Gordon told Rivero that Peter Ferguson, campaign manager to Mayor Clark, could assist Rivero in gaining entry to the union. (Stip. No. 293, 2A at 1049; Martinez, 2A at 1030).

The investigation into zoning corruption in Hialeah originally began as a overt investigation in February, 1985. Because that method proved unworkable, the FBI withdrew its presence for several months to give the subjects of the investigation the impression that the investigation had been dropped, and then established an undercover operation. FBI informant Rivero was instructed to ask Gordon if he could find a suitable location for a business called "Photon," which was a legitimate amusement project whose needs made it well suited for determining if payoffs were necessary to

obtain the required permits, licenses and variances. (Martinez, 2A at 1028–29). Rivero later introduced an undercover agent known as Gino, to Gordon; Gino posed as a Houston consultant to a group of developers interested in the Photon project. (Stip No. 318, 2A at 1050; Martinez, 2A at 1029). Gordon, who said he would be able to obtain special permits on zoning matters, later introduced Rivero to Mayor Clark. The Mayor indicated to Gordon and Rivero that if there were problems with the Hialeah matter, that he had a contact, a councilman in Hialeah. (Martinez, 2A at 1030, 1040–41).

The FBI also launched an undercover investigation into police corruption in North Bay Village, a small municipality within the Miami area, after Stephen Nahay, a self-described member of La Cosa Nostra told Rivero about such corruption. (Martinez, 2A at 1029). Rivero introduced an undercover agent, posing as a cocaine runner, to Nahay; the agent told Nahay that his people wanted to off-load drugs, but only if he were guaranteed police protection. (*Id.* at 1029–30).

On July 15, 1985, largely on the basis of Rivero's information, the office of the United States Attorney for the Southern District of Florida applied to the federal district court for authorization to use a wiretap in connection with these undercover investigations. The application, accompanied by necessary affidavits and other exhibits, was submitted to Judge Hastings who was "duty judge" for the month of July; Judge Hastings signed the requested authorization for a 30-day period and by his order, placed the documents under seal. (Martinez, 2A at 1028, 1031–33; House Exs. 160–66, 3A at 1247–1371).

The United States Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, describing the information which the FBI had obtained from the wiretap as well as from other investigative techniques. (Stip. No. 302, 2A at 1049). Judge Hastings reviewed and signed each

report and entered orders placing the progress reports under seal. (Stip. Nos. 303, 304, 306, 308, 310, 2A at 1049–50). On August 15, Judge Hastings signed and sealed a fifth progress report, dated August 14. (House Ex. 171, 3A at 1446–52). On August 15, the United States Attorney's Office applied for and received a 30-day extension for the wiretap. (House Exs. 172–74, 175a, 176b, 3A at 1453–1561). Judge Hastings signed and sealed subsequent progress reports on August 22 and 29 and September 5, 1985. (Stip. Nos. 319, 321, 322, 328, 334, 2A at 1050).

It was through Judge Hastings' review of the wiretap documents that he learned about Gordon's activities and the statements that Gordon was making about Mayor Clark. (Stip. No. 346, 2A at 1192; Hastings, 2A at 1286). Although Judge Hastings and Mayor Clark knew one another, they were neither friends nor social acquaintances. They had never visited one another at home or at work or spoken on the phone, and they had no political alliance with one another. (Hastings, 2A at 1284, 1294; Clark, 2A at 1123, 1139–40).

The wiretap documents submitted to Judge Hastings contained a number of references suggesting that Mayor Clark was being implicated in illegal activities. For example, the second progress report, dated July 29, reported Gordon as having told Rivero that he could handle any zoning or licensing problems, noting that for another business: "We cheated a little to get him in there to begin with, he's a friend of the mayor's." (Martinez, 2A at 1036–37; House Ex. 168, 3A at 1402). The fourth progress report, dated August 12, reports Gordon telling Rivero that he had Mayor Clark in "his pocket" and that he "could possibly approach him (Clark) to help us in off-loading the dope," and that Mayor Clark's campaign manager, Peter Ferguson, had gotten his [Ferguson's] "dead head" son a job on the docks by making a pay-off. (Martinez, 2A at 1037–38; House Ex. 170, 3A at 1440, 1441).

References to Mayor Clark were again present in the application for an extension and in the progress reports filed after the extension. (Martinez, 2A at 1038, 1039–41; House Ex. 173, 3A at 1475, 1510, 1536–37; House Ex. 178, 3A at 1582, 1590 n.1; House Ex. 179, 3A at 1593, 1596–97 n.1). Judge Hastings signed and sealed the third progress report after the extension of the wiretap on September 5. (Stip. No. 334, 2A at 1050; Hastings, 2A at 1290). In that report, which contains a number of references to Mayor Clark, Gordon reports to Gino, the undercover agent professing interest in the Photon project, "that he had made a connection with the Hialeah zoning commission through Mayor Clark, and that if they had any zoning problems, 'they'll be handled.' " (Hastings, 2A at 1290–91; House Ex. 180, 3A at 1602, 1605).

In the course of reviewing the wiretap documents, Judge Hastings demonstrated an interest in and made a number of comments about Mayor Clark. When the August 15 application for the extension was presented to Judge Hastings in chambers, the Judge told special agent Geoffrey Santini that he thought "Waxy" Gordon was the Miami area radio station which had as its call letters "WAXY" (Stip No. 290, 2A at 1049; Santini, 2A at 1092) and that "Waxy Gordon is like the radio station—if he doesn't keep his mouth shut, he is going to get everyone into trouble including the mayor." (Santini, 2A at 1092; Hastings, 2A at 1289). After reviewing the August 29 report, which stated that Mayor Clark had told Gordon, "If you have any problems with that thing in Hialeah get in touch with me," Judge Hastings remarked to Assistant United States Attorney Roberto Martinez "pretty heavy stuff," in reference to the Mayor. (Martinez, 2A at 1040–41; House Ex. 179, 3A at 1596–97 n.1). Martinez told Judge Hastings that Mayor Clark was not the target of the investigation, and the Judge further remarked: "Clark better be careful because he could get in trouble hanging around Waxy."

(Martinez, 2A at 1040–41; Hastings, 2A at 1289). Judge Hastings does not dispute the foregoing testimony: "[L]et me make it very clear. I read about Waxy Gordon. I read about Steve Clark. I made the comments, I believe, that Special Agent Santini and Attorney Martinez said that I said." (Hastings, 2A at 1289).

2. The Alleged September 6, 1985 Disclosure

On September 6 and 7, 1985, the Metro Miami Action Plan ("MMAP") held its third annual conference at the Hyatt Regency Hotel in Miami. (House Ex. 189, 3A at 1671). MMAP was an organization whose purpose was to diminish the disparity between Miami's black and white communities, in such areas as education, employment, housing and criminal justice. Judge Hastings was the guest speaker at the breakfast meeting on September 6. (House Ex. 189, 3A at 1671, 1673).

Judge Hastings arrived at the Hyatt Regency Hotel on Thursday evening, September 5, the night before the scheduled speech. (Hastings, 2A at 1282). Upon arrival, he informed MMAP staff members that he was involved in a trial and that he had to be back in court the following morning by 10:30 a.m. (*Id.* at 1283). A MMAP staff member, Flauren Joyette Royals (now Vickers), assisted Judge Hastings with his scheduling needs. (Vickers, 2A at 1267).

On the morning of September 6, Judge Hastings, Mayor Clark, and Monsignor Bryan Walsh greeted one another at the Hyatt Regency prior to the start of the program, engaged in casual conversation for a few minutes, and then drifted apart. Monsignor Walsh did not witness Mayor Clark and Judge Hastings in any private conversation. (Walsh, 2A at 1169–73). Mayor Clark, however, did not remember seeing the Monsignor on September 6, and could recall no other encounter with Judge Hastings that day other than the time when the Judge allegedly warned him about Gordon. (Clark, 2A at 1133). At some point, Judge Hastings returned to his room to await a call that they were ready for him at

the conference; Vickers called for Judge Hastings at his room, at probably a couple of minutes after 9:00 a.m. (Hastings, 2A at 1283; Vickers, 2A at 1275).

At 8:58 a.m. on September 6, the FBI intercepted and recorded an incoming call to Gordon from Peter Ferguson, Mayor Clark's campaign manager. In that call, Ferguson told Gordon that the Mayor "would like to see you at the [Miami Outboard Club] at 11:30." (House Ex. 185b, 3A at 1663). The FBI recorded subsequent phone calls that morning in which Gordon told Johnny Rivero and another individual that he would be meeting with Mayor Clark. (House Ex. 182, 3A at 1618, 1627–28).

Judge Hastings delivered his speech, which ended about 10:15 a.m. (Vickers, 2A at 1271), and was escorted out through a back entrance. (Hastings, 2A at 1284; Vickers, 2A at 1271–72). Judge Hastings did not go down from the podium toward the audience, and could not have done so without going all the way around the long table on the dais. (Hastings, 2A at 1283–84; Vickers, 2A at 1272). Mayor Clark, however, testified and physically demonstrated for the Committee, that:

> As soon as [Judge Hastings] left the podium after his speech, he came down across right in front of the stage, was about maybe 20 inches high, maybe two steps off the floor, and he came toward me, and I was standing in the audience and the audience was kind of breaking up at that time, and he stuck out his hand, I said, "Hello Judge," and he was moving forward toward the back of the room, where the exit was or the entrance and exit, and he said in a low tone to me, "Stay away from Kevin Gordon, he's hot, he's been using your name in the Hialeah area."

(Clark, 2A at 1123). Mayor Clark testified that he then called Ferguson, his campaign manager, and asked him to meet him at the Miami Outboard Club at 11:30 a.m. (*Id.* at 1124).

Mayor Clark and Gordon met as arranged at the Miami Outboard Club. (*Id*). According to Mayor Clark,

he went up to Gordon and said: "What are you trying to do to me? . . . I understand that you're using my name for influence out in the Hialeah area, and if you are, you'd better stop." (*Id.*) Gordon denied doing that, and Mayor Clark then told Gordon that he had it from a "very authoritative source that you're using my name in the Hialeah area." (*Id.*) Mayor Clark testified that Gordon kept pumping Mayor Clark for the source of his information, and he (Mayor Clark) told him that his source was a federal judge. After further pumping, Mayor Clark finally told him it was Judge Alcee Hastings. (*Id.*). According to Mayor Clark, Gordon's response was to turn white and appear very shaken. (*Id.*). Further, FBI agent Santini testified that Rivero reported that Gordon was extremely upset after his meeting with Mayor Clark on September 6 and "somewhat avoided" Rivero. (Santini, 2A at 1104).

3. The FBI Investigation

The FBI learned that there had been a disclosure to Mayor Clark when, on September 9, it intercepted two conversations between Gordon and Richard Bonehill, who was then a Miami attorney. In the second conversation, at 11:04 a.m., Gordon stated: "Steve called me over there to tell me that he had heard from Alcee Hastings, you know a Federal Judge. There's some rumor that I was involved with, uh, Clark, Ferguson and a councilman from Hialeah on some deal. . . ." (Santini, 2A at 1098–99; House Ex. 187b, 3A at 1668).

After listening to the tape, FBI Agent Santini immediately contacted Rivero and instructed him to watch out for himself and to try to contact Gordon to find out what was happening. (Santini, 2A at 1104). The next day, September 10, Rivero, covered by FBI agents, met with Gordon. (*Id.*). Gordon patted down Rivero. (*Id.*). According to Santini, Rivero reported both that Gordon was very upset and that Gordon had related Mayor Clark's statement that a federal judge had said that Gordon's home and Surfside, Florida phones were

wired. (*Id.*). Rivero phoned Santini, and Santini told him to go to a "safe house," where they met. (*Id.* at 1104–05). Santini further testified that prior to September 6, there had been no change in Gordon's behavior to indicate that he was aware of a federal investigation; after Gordon's September 6 meeting with Mayor Clark, Gordon was extremely wary of both Rivero and Gino, the undercover agent involved in the zoning investigation. (*Id.* at 1105 ; Mazzella, 2A at 1177).

Special FBI Agent Christopher Mazzella supervised the investigation of the wiretap disclosure. (Mazzella, 2A at 1175). The Government submitted the final two progress reports of September 12 and 16 in redacted form to Judge Hastings so that he would not become aware that he had been implicated as the source of the disclosure. (House Ex. 181, 3A at 1612–17; House Ex. 183, 3A at 1636–46). The unredacted versions of those reports were presented to Chief Judge Lawrence King for his review and signature. (King, 2A at 1241; Martinez, 2A at 1046–47; House Ex. 182, 3A at 1618–35; House Ex. 184, 3A at 1647–61). Because Gordon was a central figure in the union and zoning corruption investigations, those investigations were terminated, without successful result and with the loss of the economic and human resources that for many months had been devoted to these investigations. (Mazzella, 2A at 1175–78; Martinez, 2A at 1047).

On November 20, 1985, Gordon executed a plea agreement in which he agreed to cooperate with the FBI and the Department of Justice both with respect to the leak investigation and other criminal matters that he had uncovered. (Santini, 2A at 1111–12). He recorded a conversation with Peter Ferguson, Mayor Clark's campaign manager, on December 18, in which Ferguson suggested that Rivero was an undercover narcotics agent (House Ex. 193b, 3A at 1684), and with Mayor Clark and Ferguson on January 17, 1986 (House Ex. 194b, 3A at 1688), in which the Mayor wonders how "would the judge know

about this." (House Ex. 194b, 3A at 1690). Gordon died in February, 1986, after suffering a heart attack. (Mazzella, 2A at 1186).

With Gordon no longer available to assist in its covert investigation of the wiretap disclosure, the FBI switched to an overt investigation. (*Id.*) On February 28, 1986, the FBI interviewed Mayor Clark, his campaign manager Ferguson, and several other individuals. (*Id.*). According to Agent Mazzella, the FBI learned nothing in those interviews to suggest that its focus upon Judge Hastings was wrong but instead, found that its earlier information was corroborated. (*Id.*). Mayor Clark testified that when he was interviewed, he was hesitant to name Judge Hastings as his source, but did so. (Clark, 2A at 1131). The Mayor further testified that he was asked to wear a body recorder, but after speaking with his physician, declined to do so; he also refused the FBI's request that he speak with Judge Hastings by phone or meet him at a restaurant. (Clark, 2A at 1131; Mazzella, 2A at 1186–87).

Testimony was elicited to explore whether Mayor Clark had any motive to accuse Judge Hastings falsely. FBI Agent Mazzella testified that when Mayor Clark was interviewed, the FBI had no basis for prosecuting him on any matter. (Mazzella, 2A at 1225). Mayor Clark testified that he has no knowledge that Gordon was involved in accepting bribes to affect zoning matters, that he (Clark) has never been arrested, and that the FBI had not offered him any inducements to cooperate. (Clark, 2A at 1138, 1145–46). Mayor Clark further stated that he had no racial or personal bias against Judge Hastings. (*Id.* at 1133). In response to a question from a Committee member, Mayor Clark testified that his reference to "spooks" in one of his recorded conversations was about "scurrilous or bad"— and not, Black—people (Clark, 2A at 1145).

Judge Hastings stated that he does not know why Mayor Clark would accuse him, and protested being re-

quired "to level any accusation." (Hastings, 2A at 1293). He testified: "I have no vendetta with him. I have no reason to know he has any vendetta with me. But people have been used before to get at others." (*Id.* at 1294). Judge Hastings also introduced the testimony of James Gunn, who claimed to have known the Mayor since they were school children. Gunn testified that he heard Mayor Clark express animosity toward Judge Hastings as "a bad guy and eventually they're going to get him" and an associate of Mayor Clark's, Glen Whittle, make racist remarks in the Mayor's presence about Judge Hastings. (Gunn, 2A at 1438–40).

In the course of its investigation, the FBI also interviewed three persons who had been present at the September 6 MMAP conference; according to Mazzella, only a limited number of interviews were conducted because of concern about spreading rumors about Judge Hastings and Mayor Clark. (Mazzella, 2A at 1187–88; Martinez, 2A at 1063). Assistant United States Attorney Martinez further testified that the possibility that there had been a disclosure by any of the FBI agents and other personnel who worked on the Miami public corruption investigation "was pretty much discarded out of hand because the group was so small." (Martinez, 2A at 1083–85). The FBI agents who were regular golfing partners of Mayor Clark were not interviewed. (Mazzella 2A at 1232).

Although the investigation had revealed that the call from the Mayor's campaign manager to Gordon on September 6 had occurred before the MMAP breakfast meeting and that Mayor Clark could not be correct in stating that Judge Hastings had warned him after the meeting, the FBI did not believe that it should change the focus of its investigation. (*Id.* at 1188). Agent Mazzella testified that in his experience, it was not uncommon for a witness to be unable to recall accurately the timing of an event. (*Id.*). In his testimony before the Committee, the Mayor estimated that in 1985, he at-

tended approximately three or four speaking events per week which included meals. (Clark, 2A at 1133).

Mayor Clark and Agent Mazzella both appeared before a grand jury in March of 1986, an event reported in the *Miami Herald,* complete with a description of the information the grand jury requested from the Mayor, and mention of the fact that Judge Hastings had been the supervising judge of the wiretap, (*Id.* at 1131–32; House Ex. 188, 3A at 1670). Judge Hastings testified that he learned from reporters that there was an inquiry into his having leaked wiretap information: "I was absolutely livid the way the information was coming to me. It was rife in the courthouse and bouncing all over the place." (Hastings, 2A at 1297). In "a rage," he went to speak with Chief Judge King. (*Id.* at 1298). Other than Chief Judge King, his mother and his lawyers, Judge Hastings spoke to no one about the allegations being made against him. (*Id.* at 1314–16). Judge Hastings did not ask Chief Judge King to undertake an investigation to clear his name, and he did not contact the FBI or Government attorneys. (*Id.* at 1297–98).

On May 19, 1986, Agent Mazzella telephoned Judge Hastings about the disclosure. (Mazzella, 2A at 1189–90). Judge Hastings had his court reporter listen to and create a transcript of the conversation. (*Id.*; House Ex. 223, 3B at 1907, 1908). Judge Hastings told Mazzella that as Mazzella's call pertained to a Title III matter, it would be unlawful for him to discuss the matter with him. (Mazzella, 2A at 1191; House Ex. 223, 3B at 1910–11). Judge Hastings asked whether he was under investigation and Mazzella responded: "No. Oh, no." (House Ex. 223, 3B at 1911).

When questioned by a Committee member as to whether his response to Judge Hastings had been truthful, Mazzella stated that when he spoke with the Judge on May 19, it was his understanding that the Justice Department had decided not to prosecute him. (Mazzella, 2A at 1236). Mazzella was directed to an FBI tele-

type, dated May 19, which advised that the Department of Justice had not made a decision to decline prosecution. (*Id.* at 1234–35). In response, Mazzella testified that when he spoke with Judge Hastings, he had not yet seen the May 19 teletype and was relying on earlier information that caused him to believe there would be no criminal prosecution. (*Id.* at 1236–37). Mazzella had also testified that "in certain circumstances" he would not want to disclose to a person that he was under investigation. (*Id.* at 1219–20).

Eric Holder of the Public Integrity Section of the Department of Justice called Judge Hastings the next day, May 20. Judge Hastings declined to be interviewed. (Stip. Nos. 377 and 378, 2A at 1192).

4. Evidence Offered to Show Alternative Sources of the Disclosure

Judge Hastings introduced evidence to show that there were possible sources for the disclosure other than himself. Mayor Clark, FBI Agent Anthony Amoroso, FBI Agent Jerry Forrester, and Glen Whittle, a longtime associate and political supporter of Mayor Clark, played golf on a regular basis in 1985. On occasion, Mayor Clark also played golf with retired FBI Agent H. Paul Rico. (Clark, 2A at 1140–41; Rico, 2A at 1326; Amoroso, 2A at 1354–55; Whittle, 2A at 1334). Both Rico, the former undercover agent who had posed as Frank Romano, and Anthony Amoroso, who had served as the supervising agent, had been personally involved in the investigation of the alleged bribery conspiracy between Judge Hastings and Borders. (Amoroso, 2A at 1355; Rico, 2A at 1328). FBI Agent Tom Dowd, who met Mayor Clark through Agents Amoroso and Forrester, also saw Mayor Clark on occasion, and Mayor Clark had married Dowd and his wife. (Clark, 2A at 1141; Dowd, 2A at 1318–19). Agent Dowd was also acquainted with Rico, who was the boss of Dowd's wife; with Peter Ferguson, Mayor Clark's campaign manager; and with

Whittle. (Whittle, 2A at 1335; Dowd, 2A at 1318; Rico, 2A at 1329–30).

On July 23, 1985, one week after the wiretap was authorized and some six weeks before the alleged September 6 disclosure, Agent Dowd received a telephone call from Whittle asking whether there was an FBI investigation of Mayor Clark and Ferguson. (Dowd, 2A at 1319). Whittle said that his information came from Paul Rico. (Mazzella, 2A at 1188). Dowd was annoyed and shocked that Whittle would make such an inquiry and told Whittle he would call him back. Dowd did so, in the presence of his supervisor, reprimanded Whittle for having called him, and made a file memorandum. (Dowd, 2A at 1319–1320, 1324).

In his testimony before this committee, Whittle first stated that he did not recall making the phone call to Dowd but acknowledged that he possibly could have made the call, (Whittle, 2A at 1335), added that he believed that he made the call, (*id.* at 1336), and concluded: "I guess I made the call . . . [b]ecause you have got a memo . . . I don't recall making . . . the call." (*Id.* at 1338). He also could not recall any conversation with Rico in which they discussed whether Mayor Clark or Ferguson were under investigation. (Whittle, 2A at 1335). When pressed as to how he might have learned about an FBI investigation, Whittle referred to reading about it in the *Miami Herald* [18] (*id.* at 1336), but then concluded: "Out in the field selling life insurance, socializing, playing golf, I probably could have heard this. Picked it up on the 19th Hole, they are investigating your friend, and I went to the phone. That is probably how it could have happened." (Whittle, 2A at 1342). Rico denied that he had had any conversation with Whittle about a matter involving FBI business. (Rico, 2A at 1326, 1332).

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[18] The House later introduced three *Miami Herald* articles, dated June 22, July 8, and July 18, 1985, that reported possible conflicts of interests involving Clark. (House Ex. 231–33, 3B at 1966–69).

On July 23, or 24, Agent Mazzella, who in September supervised the investigation into the disclosure, learned of Whittle's inquiry to Dowd. (Mazzella, 2A at 1188–89). Mazzella testified that he spoke to Dowd, who had "no idea that there was even an investigation ongoing, and, in fact, there wasn't. Nobody was investigating Peter Ferguson or Mayor Clark. . . . In fact, [Dowd] was not aware of the Title III that was going on." (*Id.* at 1189). According to Mazzella there was no change in the behavior of those under investigation in the weeks that followed which would suggest that the undercover operation had been revealed. (*Id.*).

D. THE HOUSE PERSPECTIVE

According to the House, Mayor Clark's direct and unequivocal testimony that it was Judge Hastings who, on September 6, 1985, told him that "Waxy" Gordon was "hot" and using his name in Hialeah, is strongly corroborated by other evidence in the case. The House emphasizes the similarity both in the information which Judge Hastings learned from the wiretap reports, as well as the comments made by Judge Hastings when reviewing them, to the warning which Mayor Clark says Judge Hastings gave him on September 6. It takes particular note of the fact that the report submitted to Judge Hastings on September 5 stated that Waxy Gordon had said that he had a connection with the Hialeah Zoning Commission through Mayor Clark and that any zoning problems would be handled, and that one day later, Mayor Clark, who had just seen Judge Hastings that morning, told Gordon: "I understand that you're using my name for influence out in the Hialeah area, . . ." (Clark, 2A at 1124). The House further argues that it cannot be mere coincidence that it was on the very day that Mayor Clark and Judge Hastings were together, that Mayor Clark hurried to summon Gordon to a meeting to warn him to stop using his name, and that immediately after that day, Gordon became very suspicious of both Johnny Rivero, the

FBI's informant, and Gino, the undercover agent posing as the Houston consultant in the Photon project.

The House discounts the fact that Mayor Clark cannot be correct in his description of when, on September 6, Judge Hastings made the disclosures to him. The House argues that the Mayor, who during 1985, attended approximately three or four speaking events per week and was not interviewed by the FBI until some five months after the MMAP conference, is simply confused as to the details of when, during the September 6 morning conference, the disclosure occurred. Relying on the testimony that Judge Hastings and Mayor Clark were together at the conference before the program began, the House contends that there was an opportunity for the disclosure to occur, at a time consistent with the 8:58 a.m. call from the Mayor's campaign manager summoning Gordon to a meeting. It further urges that Mayor Clark's recollection that Judge Hastings warned him about Gordon after he (the Mayor) said "Hello, Judge" and shook Judge Hastings' extended hand, is consistent with the greetings that were occurring before the program began.

Finally, the House views Judge Hastings' alternate theories as to how the leak could have occurred as not credible. It argues that those theories do not explain the coincidence in timing between the September 6 contact between Judge Hastings and Mayor Clark and Mayor Clark's immediate efforts to put a stop to the use of his name by Gordon. From the perspective of the House, the Government's early focus on Judge Hastings as the source of the disclosure was completely appropriate and proved to be correct.

As for Judge Hastings' motive, the House does not accuse him of venality or greed. It instead accuses him of bad judgment which it contends had devastating consequences upon important investigations into public corruption.

E. JUDGE HASTINGS' PERSPECTIVE

Judge Hastings categorically denies making any disclosure of confidential information at any time during his tenure as a judge, either to Mayor Clark or to anyone else, and he contends that the House has wholly failed to prove its case against him. Judge Hastings emphasizes that Mayor Clark's story, as told, cannot be true. With its principal witness accusing him of making the disclosure at a time and in manner that was impossible, the House has, according to Judge Hastings, fallen far short of meeting its burden of proof on Article XVI.

Judge Hastings faults the government for failing to investigate other possible sources for the disclosure and for what he sees as its single-minded and misguided focus upon him. He defends his refusal to speak with the Government and to involve himself in its investigation on the basis that by the time he was approached, "the matter was in full bloom and no one had come to me," (Hastings, 2A at 1298), and also because he had felt "abuse[d] by the Public Integrity Section [of the Justice Department]" in its conduct of the bribery prosecution. (*Id.* at 1305).

Judge Hastings rejects any suggestion that it is his burden to explain how the leak occurred or his obligation to conjecture as to why Mayor Clark would accuse him falsely. When asked, however, he did suggest that "Steve Clark has a whole lot of problems," as "borne out" in the evidence, and noted that "people have been used before to get at others." (*Id.* at 1293–94). Judge Hastings further contends that Mayor Clark's social contact with past and former FBI agents, including two who had been intrinsically involved in the bribery investigation, as well as Whittle's July call to Agent Dowd, demonstrate that there was an opportunity for a leak of confidential information. When pressed by the House Managers to explain his theories further, Judge Hastings responded as follows:

> [Y]ou again are asking me to fancy up something about what somebody else did. I've told you what I didn't do. It's to be believed or not to be believed.
>
> But if you wish to go into that, you know, coincidences, I keep having people say that no coincidences can happen with me. I find it passing strange that H. Paul Rico and Steve Clark are golf partners. I find it more than passing strange that Anthony Amoroso and Stephen Clark are golf partners. Anthony Amoroso happened to have been the original supervising agent over William Murphy in my original case.
>
> Now, whether or not there was any conspiracy on their behalf, I don't have to level any accusation. I know what I did not do, and I will stand on that.

(*Id.* at 1293).

* * * * *

This concludes the Committee's summary of the evidence which it received at its evidentiary hearings. Pursuant to section 2 of Senate Resolution 162 of the 101st Congress, the Committee is authorized, until the Senate's final disposition of the articles of impeachment against Judge Hastings, to continue its legal action to enforce its subpoena to William Borders, to hear his testimony, and to report it to the Senate. Accordingly, the Committee may supplement this report if Mr. Borders decides to obey the judicial order that requires him to testify.

Committee Rollcall Vote

In compliance with paragraph 7 (b) and (c) of Rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings to issue this report to the Senate was as follows:

YEAS	NAYS
Mr. Bingaman	
Mr. Specter	
Mr. Leahy	
Mr. Pryor	
Mr. Bryan	
Mr. Kerrey	
Mr. Lieberman	
Mr. Durenberger	
Mr. Rudman	
Mr. Bond	
Mr. Gorton (by proxy)	
Mr. Burns	

ADDENDUM A

Articles of Impeachment Against Judge Alcee L. Hastings

[H. Res. 499, 100th Cong., 2d Sess.]

[Exhibited to Senate on August 9, 1988]

Resolution Impeaching Alcee L. Hastings, Judge of the United States District Court for the Southern District of Florida, of High Crimes and Misdemeanors.

Resolved, That Alcee L. Hastings, a judge of the United States District Court for the Southern District of Florida, be impeached for high crimes and misdemeanors and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Alcee L. Hastings, a judge of the United States District Court for the Southern District of Florida, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

From some time in the first half of 1981 and continuing through October 9, 1981, Judge Hastings and William Borders, then a Washington, D.C. attorney, engaged in a corrupt conspiracy to obtain $150,000 from defendants in *United States* v. *Romano,* a case tried before Judge Hastings, in return for the imposition of

sentences which would not require incarceration of the defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE II

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings and William Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in *United States* v. *Romano,* a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE III

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., to modify the sentences of defendants in *United States* v. *Romano,* a case tried before Judge Hastings, from a term in the Federal penitentiary to probation in return for a bribe from those defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE IV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., in connection with a payment on a bribe, to enter an order returning a substantial amount of property to the defendants in *United States* v. *Romano,* a case tried before Judge Hastings. Judge Hastings had previously ordered that property forfeited.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE V

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' appearance at the Fontainebleau Hotel in Miami Beach, Florida, on September 16, 1981, was not part of a plan to demonstrate his participation in a bribery scheme with William Borders of Washington, D.C., concerning *United States* v. *Romano,* a case tried

21-913 0 - 89 - 6

before Judge Hastings, and that Judge Hastings expected to meet Mr. Borders at that place and on that occasion.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings did not expect William Borders, of Washington, D.C., to appear at Judge Hastings' room in the Sheraton Hotel in Washington, D.C., on September 12, 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath, make a false statement which was intended to mislead the trier of fact.

The false statement concerned Judge Hastings' motive for instructing a law clerk, Jeffrey Miller, to prepare an order on October 5, 1981, in *United States* v. *Romano,* a case tried before Judge Hastings, returning a substantial portion of property previously ordered for-

feited by Judge Hastings. Judge Hastings stated in substance that he so instructed Mr. Miller primarily because Judge Hastings was concerned that the order would not be completed before Mr. Miller's scheduled departure, when in fact the instruction on October 5, 1981, to prepare such order was in furtherance of a bribery scheme concerning that case.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' October 5, 1981 telephone conversation with William Borders, of Washington, D.C., was in fact about writing letters to solicit assistance for Hemphill Pride of Columbia, South Carolina, when in fact it was a coded conversation in furtherance of a conspiracy with Mr. Borders to solicit a bribe from defendants in *United States* v. *Romano,* a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE IX

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and

contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that three documents that purported to be drafts of letters to assist Hemphill Pride, of Columbia, South Carolina, had been written by Judge Hastings on October 5, 1981, and were the letters referred to by Judge Hastings in his October 5, 1981 telephone conversation with William Borders, of Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE X

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on May 5, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803–758–8825 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on August 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803–782–9387 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on September 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803–758–8825 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that 803–777–7716 was a telephone number at a place where Hemphill Pride could be contacted in July 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XIV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on the afternoon of October 9, 1981, Judge Hastings called his mother and Patricia Williams from his hotel room at the L'Enfant Plaza Hotel in Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact concerning his motives for taking a plane on October 9, 1981, from Baltimore-Washington International Airport rather than from Washington National Airport.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XVI

From July 15, 1985, to September 15, 1985, Judge Hastings was the supervising judge of a wiretap instituted under chapter 119 of title 18, United States Code (added by title III of the Omnibus Crime Control and Safe Streets Act of 1968). The wiretap was part of cer-

tain investigations then being conducted by law enforcement agents of the United States.

As supervising judge, Judge Hastings learned highly confidential information obtained through the wiretap. The documents disclosing this information, presented to Judge Hastings as the supervising judge, were Judge Hastings' sole source of the highly confidential information.

On September 6, 1985, Judge Hastings revealed highly confidential information that he learned as the supervising judge of the wiretap, as follows: On the morning of September 6, 1985, Judge Hastings told Stephen Clark, the Mayor of Dade County, Florida, to stay away from Kevin "Waxy" Gordon, who was "hot" and was using the Mayor's name in Hialeah, Florida.

As a result of this improper disclosure, certain investigations then being conducted by law enforcement agents of the United States were thwarted and ultimately terminated.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XVII

Judge Hastings, who as a Federal judge is required to enforce and obey the Constitution and laws of the United States, to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to perform the duties of his office impartially, did, through—

(1) a corrupt relationship with William Borders of Washington, D.C.;

(2) repeated false testimony under oath at Judge Hastings' criminal trial;

(3) fabrication of false documents which were submitted as evidence at his criminal trial; and

(4) improper disclosure of confidential information acquired by him as supervisory judge of a wiretap;

undermine confidence in the integrity and impartiality of the judiciary and betray the trust of the people of the United States, thereby bringing disrepute on the Federal courts and the administration of justice by the Federal courts.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

JIM WRIGHT,
Speaker of the House of Representatives.
Attest: DONNALD K. ANDERSON,
Clerk.

ADDENDUM B

S. RES. 38, AS AMENDED BY S. RES. 123, 101ST CONG., 1ST SESS.

Resolved, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The Majority and Minority Leader shall each recommend six members to the Presiding Officer for appointment to the committee. The committee shall designate one of its members to be chairman and one of its members to be vice chairman.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the presiding officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before

it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. The actual and necessary expenses of the committee, including the employment of staff at an annual rate of pay, and the employment of consultants with prior approval of the Committee on Rules and Administration at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee, except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.

SEC. 7. The Secretary shall notify the House of Representatives and counsel for Judge Alcee L. Hastings of this resolution.

ADDENDUM C

Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials

XI. That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and

materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

ADDENDUM D

Description of Committee Proceedings

To assist Senators in further understanding how its Committee prepared the record that it has certified to the Senate, this addendum describes several of the Committee's decisions about the preparation for, and the conduct of, its evidentiary hearings. The pretrial orders of the Committee may be of particular help in this regard.[19]

The addendum's second purpose is to assist the Senate and any future committees in making decisions about the appropriate use of Rule XI committees. This committee is the second committee to be appointed under Impeachment Rule XI to receive and to report evidence to the Senate in an impeachment trial. The first Rule XI committee was appointed in 1986 for the impeachment trial of Judge Harry E. Claiborne. A third committee, appointed in May, 1989, for the impeachment trial of Judge Walter L. Nixon, Jr., has also completed its evidentiary hearings. The work of these committees may give the Senate a basis for evaluating the impeachment trial mechanism that is established by Rule XI, and aid any future impeachment trial committees in determining useful ways of proceeding.

Part 1 of the hearing report contains the record of the Committee's pretrial proceedings, between its appoint-

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[19] The Committee's pretrial orders are reprinted in the hearing record, pt. 1 at 281, 341, 483, 601, 737, 855, and 875.

ment on March 16, 1989, and the beginning of its evidentiary hearings on July 10, 1989.[20] During that interval the Committee responded to three related requests by Judge Hastings for aid in preparing for trial.

First, Judge Hastings moved that the Senate provide funds for his defense. (Pt. 1 at 203). In the absence of any precedent to support the payment of defense funds to an impeached official, the Committee determined not to recommend to the Senate that the motion be granted. The Committee noted that Judge Hastings may renew his request for defense funds at the close of the Senate's proceedings on the articles of impeachment. (Pt. 1 at 483).

Second, in April, 1989, Judge Hastings asked that evidence not be taken for at least six months. (Pt. 1 at 163, 174). The Committee concluded that the nearly four months between its appointment on March 16, 1989, and the commencement of hearings on July 10, 1989, would provide the parties with ample preparation time. (Pt. 1 at 341–42). In rejecting Judge Hastings' request, the Committee was mindful that Senate Resolution 480 of the 100th Congress had directed the parties to be prepared by March 1, 1989, to present their evidence in a forum designated by the Senate.

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[20] The full record of the pretrial proceedings in this impeachment requires reference to the prior proceedings before the Committee on Rules and Administration, *see* S. Rep. No. 542, 100th Cong., 2d Sess. (1988); S. Hrg. No. 3, 101st Cong., 1st Sess. (1989); S. Rep. No. 1, 101st Cong., 1st Sess. (1989), and the actions of the parties and the Senate pursuant to S. Res. 480, 100th Cong., 2d Sess. (1988), and S. Res. 39, 101st Cong., 1st Sess. (1989). Pursuant to S. Res. 39, the parties briefed and argued Judge Hastings' motions to dismiss Impeachment Articles I–XV and XVII. The parties' briefs are reprinted in S. Doc. No. 4, 101st Cong., 1st Sess. (1989). The Senate denied the motions to dismiss on March 16, 1989. 135 Cong. Rec. S2802–2803 (daily ed.).

Judge Hastings' third principal request was for discovery. The House had access to investigatory materials compiled by the Investigating Committee of the Judicial Council of the Eleventh Circuit in the course of investigating complaints against Judge Hastings that had been lodged by fellow judges under the Judicial Conduct and Disability Act of 1980. Although Judge Hastings could have participated in the Investigating Committee's proceedings by cross-examining its witnesses and by utilizing the Judicial Council's subpoena power to compel the attendance of other witnesses,[21] he made a deliberate decision not to participate in the Investigating Committee's proceedings because he believed that participation in them might prevent him from challenging the constitutionality of the Judicial Conduct and Disability Act. (Pt. 1 at 255). The House also had access to records of the Department of Justice, including the Federal Bureau of Investigation. Judge Hastings asked this Committee for assistance in obtaining discovery. (Pt. 1 at 163, 176–83).

The Committee encouraged the House to be as forthcoming as possible to particularized requests by Judge Hastings for documents. (Pt. 1 at 281, 285–89). The House provided substantial materials to Judge Hastings (pt. 1 at 363), as did the Investigating Committee for the Eleventh Circuit. (Pt. 1 at 389). The Committee also expressed its hope and expectation that the Department of Justice and the Federal Bureau of Investigation also would cooperate voluntarily to provide relevant information. (Pt. 1 at 290). After the Federal Bureau of In-

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[21] Report of the Investigating Committee to the Judicial Council of the Eleventh Circuit, *reprinted in In the Matter of the Impeachment Inquiry Concerning U.S. District Judge Alcee L. Hastings: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary (Appendix 1)*, 100th Cong., 1st Sess. 6–8 (1987).

vestigation and the Department of Justice rejected some of Judge Hastings' requests (pt. 1 at 699, 707), the Committee arranged with the Department for an *in camera* review of documents. (Pt. 1 at 711). On the basis of the review, the Department released to the Committee additional documents, which were provided to the parties. (Pt. 1 at 713–16). The Committee also assisted Judge Hastings' discovery of information by authorizing several depositions. (Pt. 1 at 605–608, 740).

While the Committee was seeking to enlarge Judge Hastings' access to evidence in the possession of governmental entities, the Committee also acted during the pretrial proceedings to focus the evidentiary hearings on matters that were relevant both to the articles of impeachment and the subject of dispute.

The Committee ruled on the motion of the House to exclude several categories of evidence as irrelevant. On the ground that the articles of impeachment concern Judge Hastings' conduct and not the conduct of other members of the judicial branch, the Committee excluded testimony about the motivations of persons who initiated, investigated, and considered the complaints that were filed against Judge Hastings with the Eleventh Circuit under the Judicial Conduct and Disability Act. (Pt. 1 at 283–85). On the other hand, the Committee indicated that it would permit a limited examination of the motivations of federal prosecutors and investigators to determine whether they conducted their investigations in a manner intended to mislead a court or trier of fact about Judge Hastings' guilt or innocence. (*Id.*).

When the Senate agreed to Senate Resolution 480 of the 100th Congress to continue these impeachment proceedings from the last Congress to the present one, it asked the parties to work together to identify and stipulate to matters not in genuine dispute. Judge Hastings declined to join the House in a voluntary pretrial stipu-

lation process. As a number of facts potentially relevant to this impeachment trial were the subject of evidence in earlier criminal and investigatory proceedings, and were either undisputed then or are not now the subject of any real present controversy, the Committee concluded that it could simplify the evidentiary proceedings by directing Judge Hastings to respond to the 378 stipulations of fact that had been proposed by the House. Similarly, the Committee directed the House to respond to any stipulations proposed by Judge Hastings who, however, submitted none.

The Committee directed that any proposed stipulation of fact would be accepted as true unless the opposing party filed an objection which included a proffer as to why the proposed stipulation of fact should not be accepted as true. (Pt. 1 at 291–93). In succeeding orders, the Committee refined the scope of the stipulation process. (Pt. 1 at 601–605). Judge Hastings argued strongly against being required to engage in this process of narrowing the factual issues in dispute, but finally submitted objections to numbers of proposed stipulations. (Pt. 1 at 615–88).

The House's proposed stipulations were reviewed in light of Judge Hastings' objections to the process as a whole and to particular proposed stipulations. Also, under standards described in a pretrial order, each proposed stipulation was independently reviewed by Committee counsel in light of the testimony and other documents available to the Committee from prior proceedings. (Pt. 1 at 855, 858–59). On the basis of this review, the Committee advised the parties that it would accept certain of the House's stipulations as evidence of fact subject to Judge Hastings' right to challenge their relevance and to introduce contravening evidence at trial. (Pt. 1 at 859–62). The Committee revised certain stipulations to correct inaccuracies or to take account of objec-

tions, and resubmitted them to the parties for a further response. (Pt. 1 at 862–73). As a result of this process, the Committee authorized the acceptance into evidence of 188 stipulations, either in the form that had been initially proposed by the House or as revised by the Committee. Judge Hastings did not utilize his right to offer any evidence that contravened the stipulations that were admitted into evidence.

Finally, the Committee established guidelines for the number of trial hours in order to facilitate realistic trial preparation and to enable the Senate and the parties to focus on matters that are important to the Senate's consideration of the Articles of Impeachment. It proposed that eighty hours be divided equally between the parties, but promised to apply that guideline flexibly. (Pt. 1 at 610–11). In fact, the parties were able to complete their cases well within the eighty hours that the Committee had allotted. Neither party was denied the opportunity to call a witness because of the unavailability of time.

In order to enable the parties to present their cases fully within the time guidelines established by the Committee, the Committee permitted the use of the prior recorded testimony of some witnesses whose credibility had not been questioned or whose testimony related to facts not in substantial dispute. (Pt. 1 at 609–10, pt. 2A at 61). The testimony of 26 witnesses from prior proceedings was received as part of the evidentiary record.[22]

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[22] The prior testimony that the Committee admitted into its record were from the separate criminal trials of William Borders in *United States* v. *Borders*, No. 82–75–A (N.D. Ga.), and Judge Hastings in *United States* v. *Hastings*, No. 81–596–Cr. (S.D. Fla.), and from the proceedings, on complaints against Judge Hastings, of the Investigating Committee of the Judicial Council of the Eleventh

Continued

During the pretrial proceedings, the parties had raised a question about the evidentiary principles that would govern the Committee's proceedings. The Committee provided this guidance:

> The committee's task is to receive and report evidence to the Senate. The Senate reserves the power to determine the competency, relevancy, and materiality of the evidence received by the committee. The committee is not bound by the Federal Rules of Evidence, although those rules may provide some guidance to the committee. Members of the Senate sit both as judges of law and fact. Precise rules of evidence are not needed in an impeachment trial to protect jurors, lay triers of fact, from doubtful evidence. In the end, the task of the Senate will be to weigh the relevance and quality of the evidence.

(Pt. 1 at 293).[23]

Circuit under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 331 *et seq.*, and, in the case of a witness who was ill, from the impeachment inquiry concerning Judge Hastings before a subcommittee of the House Committee on the Judiciary.

[23] Professor Charles Black has written as follows on rules of evidence in impeachment trials:

[T]echnical rules of evidence were elaborated primarily to hold *juries* within narrow limits. They have no place in the impeachment process. Both the House and the Senate ought to hear and consider *all* evidence which seems relevant, without regard to technical rules. Senators are in any case continually exposed to "hearsay" evidence; they cannot be sequestered and kept away from newspapers, like a jury. If they cannot be trusted to weigh evidence, appropriately discounting for all the factors of unreliability that have led to our keeping some evidence away from juries, then they are not in any way up to the job, and "rules of evidence" will not help. Black, *Impeachment: A Handbook* 18 (1974) (emphasis in original).

In applying these principles, the Committee sought to distinguish between those evidentiary rules which are necessarily applied, if they are to be useful, at the time that questions are asked, and those rules whose application may be reserved until the ultimate trier of fact, the full Senate, evaluates the evidentiary record. Thus, the Committee sought to restrain the asking of leading questions on direct examination so that the Senate would receive a record of the testimonial recollections of witnesses rather than the commentary of counsel. On the other hand, the Committee permitted testimony that might be excludable as hearsay where it concluded that the full Senate should have an opportunity to determine whether the circumstances of a reported declaration of fact might allow Senators to conclude, particularly in the absence of more probative evidence, that some weight should be given to the declaration.

ADDENDUM E

GLOSSARY OF NAMES WHICH APPEAR IN THE COMMITTEE'S REPORT

AMOROSO, ANTHONY: Miami FBI Agent who supervised the 1981 investigation of the alleged bribery conspiracy; also a golfing partner of Mayor Stephen Clark in 1985.

ASKEW, REUBEN: Former Governor of Florida who in 1977 appointed Judge Hastings to the state circuit court in Florida.

ATTENBURGER, DAVID: Supervisory Special Agent with the FBI Document Laboratory who examined the draft cover letter and draft letters regarding support for Hemphill Pride.

AVERY, SENORA: Supervisor of C&P Telephone's Hotel Billing Information Center in Virginia.

BELL, GRIFFIN: United States Attorney General during the Carter administration.

BIRD, DALE: FBI Agent who participated in surveillance and investigation in Washington on October 9, 1981.

BLOCKER, ALBERT: Comptroller of the L'Enfant Plaza Hotel who testified regarding the telephone billing records for calls made from Judge Hastings' room.

BONEHILL, RICHARD: Kevin "Waxy" Gordon's attorney.

BOONE, LAVERNE: Eastern Airlines employee who provided information on passenger records.

BORDERS, JR., WILLIAM A.: Former Washington, D.C. attorney who was convicted in a separate trial in 1982 of conspiring with Judge Hastings to solicit a bribe from the Romano brothers.

BROWN, BENJAMIN DANIEL: A political associate of William Borders from 1975 to 1980 who had known him since their law school days.

CANTU, ANTONIO A.: Research chemist with the Office of Protective Research of the U.S. Secret Service who performed tests on the draft cover letter and draft letters regarding support for Hemphill Pride.

CARTER, MARILYN: Judge Hastings' deputy courtroom clerk.

CHISHOLM, ANDREW: Presently a professor of criminology at the University of South Carolina and in 1981, a political associate of William Borders. At his criminal trial, Judge Hastings identified Dr. Chisholm's office telephone number as a number where Hemphill Pride could be reached.

CLAIBORNE, HARRY E.: Former federal district judge for the District of Nevada who was tried and convicted on articles of impeachment in 1986.

CLARK, STEPHEN: Mayor of Dade County who contends that Judge Hastings disclosed confidential wiretap information to him in 1985.

DARA, WILLIE: According to William Dredge, Dara was the individual with whom Dredge spoke when Borders asked him to find out about the Romano brothers' reputation.

DEICHERT, JAMES: Attorney for the Department of Justice Strike Force who prosecuted the Romanos in 1980 and 1981.

DOWD, TOM: Miami FBI Agent and acquaintance of Mayor Clark who, in July, 1985, received a telephone call from Glen Whittle inquiring about whether there

was an investigation of Mayor Clark and Peter Ferguson.

DREDGE, WILLIAM: The confidential informant who brought information to the Government about an alleged bribery conspiracy in the *Romano* case, and who introduced former FBI Agent H. Paul Rico to William Borders in September, 1981.

FERGUSON, PETER: Mayor Clark's campaign manager who was asked to arrange a meeting between "Waxy" Gordon and Mayor Clark after the alleged wiretap disclosure by Judge Hastings.

FORRESTER, JERRY: Miami FBI Agent and golfing partner of Mayor Clark in 1985.

GIANNOTTI, DICK: FBI Undercover Agent known as "Gino" who posed as a Houston consultant to a group of developers in one of the FBI public corruption investigations in 1985.

GOLAR-WILLIAMS, ELEANOR: Ex-mother-in-law of Patricia Williams; at his criminal trial, Judge Hastings testified that her telephone number was a number where he had reached Hemphill Pride during 1981.

GORDON, KEVIN "WAXY": In 1985, zoning code enforcer for the city of Surfside, Florida; representations that he made about Mayor Clark were the subject of the alleged wiretap disclosure.

GUNN, JAMES: A Miami resident who claims to have known Mayor Clark since school days; reported comments that he claims to have heard Mayor Clark and Glen Whittle make about Judge Hastings.

HARMON, JIMMY: Former Agent of the Bureau of Alcohol, Tobacco and Firearms for whom William Dredge was a longtime informant.

HASTINGS, MILDRED: Judge Hastings' mother.

HIRSCHHORN, JOEL: Attorney who represented Judge Hastings in his criminal proceedings from shortly after Judge Hastings' indictment until March 2, 1982.

HOLDER, ERIC: In 1985, attorney with the Public Integrity Section of the Department of Justice who called Judge Hastings to interview him about the alleged wiretap disclosure.

KING, JAMES LAWRENCE: Chief Judge of the United States District Court for the Southern District of Florida who testified concerning Judge Hastings' performance as a federal district judge, and to whom unredacted versions of the wiretap progress reports were submitted in 1985.

LATIMER, HENRY: A practicing attorney in Florida and former state court judge who has been well-acquainted with Judge Hastings and William Borders

LEWIS, JAMES WOODROW: Former Chief Justice of the South Carolina Supreme Court with whom Hemphill Pride met in the summer of 1981 to make amends for Pride's public criticism of that court.

LOUCKS, WENDY R.: Miami FBI Agent who observed Judge Hastings at the Fontainebleau Hotel on September 16, 1981, and interviewed Patricia Williams on October 9, 1981.

LOWE, RICHARD: Supervisor of Ticket Control and Custodian of Records for Eastern Airlines.

MAPP, PEARL: Formerly Pearl Dabreau; in 1981, a social acquaintance of Judge Hastings who was present at the gathering in Judge Hastings' room on September 12, 1981, at the Washington-Sheraton Hotel.

MARTINEZ, ROBERTO: In 1985, the Assistant United States Attorney for the Southern District of Florida with primary responsibility for three public corruption investigations for which Judge Hastings had authorized a wiretap.

MAVRIDES, ANDREW: One of Judge Hastings' defense attorneys before his criminal trial; Judge Hastings testified that he kept the draft "letters for Hemp" in Mavrides' safe during part of the period before his trial.

MAZZELLA, CHRISTOPHER: FBI Agent in Miami who supervised the investigation of the wiretap disclosure.

McCRARY, JESSE, JR.: A Miami attorney who has known Judge Hastings and William Borders since law school and William Borders since 1970 or 1971; briefly represented William Dredge in July, 1981; was with Judge Hastings at the Sheraton-Washington Hotel on September 12, 1981; and was also present at the MMAP Conference on September 6, 1985.

McDONALD, WAYNE A.: FBI Agent who testified regarding the location of a pay telephone at the federal courthouse in Miami.

McIVER, CAROLYN: A social acquaintance of Judge Hastings whose office telephone number is one of the numbers where Judge Hastings, at his criminal trial, testified that he had spoken with Pride.

MILLER, JEFFREY: Judge Hastings' law clerk in 1981 who was assigned to work on the case of *United States v. Romano.*

MOSCATO, PHILLIP "BROTHER": An associate of the Romanos with whom William Dredge claims to have met in order to convey William Borders' offer to help the Romanos with their case.

MUNDY, KEN: An attorney whose name Pride gave to Judge Hastings on October 9, 1981, the day of Borders' arrest.

MURPHY, WILLIAM: The FBI's case agent for the investigation of the alleged bribery conspiracy in 1981.

MYRILL, DONNA: Formerly Donna Mendez; a former law clerk of Jesse McCrary who was present at the gathering in Judge Hastings' room on September 12, 1981, at the Washington-Sheraton Hotel in Washington.

NAHAY, STEPHEN: An individual who told undercover informant Johnny Rivero, about alleged police corruption in North Bay Village, Florida.

NESLINE, JOSEPH: Reputed old-time Washington gambler, at whose apartment William Dredge claims to have met William Borders.

OWENS, MARGARET: Formerly Margaret Dabreau; invited by her sister, Pearl Dabreau, to join the gathering in Judge Hastings' room at the Washington-Sheraton Hotel on September 12, 1981.

PAINE, JAMES C.: Federal district judge for the United States District Court for the Southern District of Florida for whom Jeffrey Miller was scheduled to work upon completion of his clerkship with Judge Hastings.

PERRY, MATTHEW: Federal district judge for the United States District Court for the District of South Carolina who has been personally acquainted with Judge Hastings, William Borders and Hemphill Pride.

PETTY, MADELINE: A social companion of Borders in 1981 who traveled with him to Las Vegas to attend the Leonard-Hearns championship fight on September 16, 1981.

PRIDE, HEMPHILL: A South Carolina attorney, described by Judge Hastings as having been his closest friend; according to Judge Hastings, he and William Borders were, in 1981, engaged in an effort to solicit help for Pride, whose law license had been indefinitely suspended.

PRIDE, SHIRLEY: In 1981, Hemphill Pride's wife; she was present at the L'Enfant Plaza Hotel on October 9; 1981.

RASKIN, MARTIN: In 1981, Chief of the Criminal Division for the United States' Attorney's Office in the Southern District of Florida.

RICO, H. PAUL: Retired FBI Agent who was recruited by the Government to pose as Frank Romano in the

undercover investigation of Judge Hastings and William Borders in 1981; also, an acquaintance and occasional golfing partner of Mayor Clark in 1985.

RIVERO, JOHNNY: An undercover informant in the 1985 investigations into public corruption in the Miami area.

ROBINSON, KENNETH: A criminal defense lawyer in Washington, D.C., who testified that William Dredge tried to retain him in 1981 in connection with Dredge's federal drug charges in Maryland.

ROGERS, EDWARD: State circuit court judge in Florida who attended law school with both Judge Hastings and Hemphill Pride.

ROGERS, CYNTHIA: In 1981, William Borders' law office receptionist.

ROGERS, MARTHA: In 1981, the Assistant United States Attorney in Miami, Florida, who interviewed William Dredge in July, 1981.

ROMANO, FRANK: Defendant in *United States v. Romano.*

ROMANO, THOMAS: Defendant in *United States v. Romano.*

ROSS, SHIRLEY: Social acquaintance of Judge Hastings; she and Judge Hastings testified that they had dinner together on September 11, 1981, at the Sheraton-Washington Hotel.

SANTINI, GEOFFREY: Miami FBI Agent who supervised the undercover informant, Johnny Rivero, in the investigations into public corruption in the Miami area in 1985.

SHULL, KENDALL: FBI Agent who dealt in an undercover capacity with Joseph Nesline in 1985.

SHORTER, JOHN: William Borders' attorney at the time of Borders' arrest in 1981 and through his 1982 trial.

SHUY, ROGER: Professor of linguistics at Georgetown University who was called by the House as an expert witness regarding the October 5, 1981 telephone conversation between William Borders and Judge Hastings.

SIMMONS, JOHN: FBI Agent assigned to the Ft. Lauderdale, Florida office, who interviewed Judge Hastings and his staff on October 9, 1981.

SONNETT, NEAL: Represented Thomas and Frank Romano in their post-trial proceedings before Judge Hastings.

STONE, RICHARD: Former U.S. Senator from Florida who supported Judge Hastings' nomination to the federal bench.

THOMAS, DAVID: William Borders' cousin who drove Borders from West Palm Beach, Florida, to their family reunion on September 12, 1981.

THOMPSON, ESSIE: Social acquaintance of Judge Hastings who dined with him at the Fountainebleau Hotel on September 16, 1981.

TRAFFICANTE, SANTO: Reputed organized crime boss of South Florida, whose criminal case was pending before Judge Hastings in 1981.

VICKERS, FLOREN JOYETTE: Formerly Floren Joyette Royals; MMAP staff member who handled Judge Hastings' schedule at the MMAP conference on September 6, 1985, and who escorted him out, after he completed his speech.

WALSH, MONSIGNOR BRYAN: Monsignor Walsh exchanged greetings with Judge Hastings and Mayor Clark before the morning program began at the MMAP Conference on September 6, 1985.

WAMPLER, ATLEY: In 1981, United States Attorney for the Southern District of Florida.

WHITTLE, GLEN: Longtime friend, political supporter, and golfing partner of Mayor Clark; Whittle called

FBI Agent Tom Dowd in July, 1985, to ask whether there was an FBI investigation of Mayor Clark and Peter Ferguson.

WILLIAMS, BETTY ANN: Judge Hastings' secretary since December, 1980.

WILLIAMS, PATRICIA: Former fiancee of Judge Hastings and, beginning in 1981, his attorney; Judge Hastings called her and went to her home on October 9, 1981, the day of Borders' arrest.

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